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Summary of, and Responses to, Public Comments on Proposed Amendments to Regulations of the Enterprise Zone Program (CCR Title 25, Chapter 7, Subchapter 21)

August 2006

On October 21, 2005, the Department of Housing and Community Development ("HCD" or "department") released proposed Enterprise Zone Program ("EZ") regulations and regulation amendments for public review and comment. The comment period ended December 7, 2005. One public hearing was held, in Sacramento on December 7.

The department received an extraordinary number of comments in response to these proposed regulations. Because of the diversity of the stakeholder groups, frequently comments represented mutually exclusive points of view. The department is deeply grateful for the level of interest and the assistance of the commenters in the development of appropriate public policies and is confident that the interested stakeholders will understand that because of the many conflicting points of view it is impossible to accommodate all comments.

The following table lists commenters' names and affiliations. The abbreviations in the left-hand column are used in the body of this document to identify the commenting party. The abbreviation for the commenting party, or parties, is noted in the particular Major Issues or Section-by-Section Comments sections. Where appropriate, comments have been summarized or aggregated.

Thanks to all who commented. As you can see in the responses below, many of your recommendations have been adopted to improve the regulations. Where we disagree with comments, we believe we have made the reasons clear.

	Commenter	Affiliation
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DH	Dave Heyer	Merced County, 1880 W. Wardrobe Avenue, Merced, CA 95340-6407, (209) 724-2000
DS	Doug Sweetland	Stanislaus EZ
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EJ	(Name not given)	E & J Gallo Winery
FA	Fran Aguilera	San Joaquin County, 56 S. Lincoln Street, Stockton, CA 95203, (209) 462-9063, for Stockton EZ
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GB	Gary Buse	Targeted Management Company, gbuse@sbcglobal.net, (714) 245-0511
IKR	Isaac Kos-Read	Townsend Public Affairs, Inc., 3411 E. 12th Street, #200, Oakland, CA 94601, (510) 535-6907, for Management Insights, Inc.
JA	Juan Arambula	California Legislature (Assembly Committee on Jobs, Economic Development and the Economy), State Capitol, PO Box 942849, Sacramento, CA 94249-0081, (916) 319-2090
JB	Jeani Brent	Joseph C. Sansone Co., 10840 Edison Avenue, Chesterfield, Missouri 63005, (866) 713-3149
JFF	John F. Fowler	Merced County, 2507 Heritage Drive, Atwater, CA 95301, (209) 385-7686, for Merced-Atwater EZs
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JP	Joel K. Postal	First Advantage, 2929 North Central Avenue, Suite 1800, Phoenix, AZ 85012, (602) 288-2100
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JTS	Joan T. Smith	Siskiyou County Economic Development Council, 1512 Oregon St., Yreka, CA 96097, (530) 842-1638, for Shasta Valley EZ
LG	Lina German	City of Santa Ana, 20 Civic Center Plaza, PO Box 1988, Santa Ana, CA 92702, for Santa Ana EZ
LK	Loren Kaye	Kahl/Pownall Advocates, 1115 11th Street, Suite 100, Sacramento, CA 95814, (916) 448-2162, for California Employment Opportunity Network
LM	Lydia Moreno	City of San Diego, for San Diego EZ
LS	Loretta Schlosser	California Association of Enterprise Zones, (209) 385-7686
MD	Marty Dicasian	Attorney
MS	Max Shenker	The Tax Credit Company, 5757 Wilshire Blvd., PH1, Los Angeles, CA 90035, (323) 330-0444
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PRDT	Paul R. Di Tomaso and Laurel R. Di Tomaso	Di Tomaso & Di Tomaso Inc., PO Box 1445, Oakhurst, CA 93644, (559) 642-2930

RW	Rhonda Wilcoxen	The Permanente Medical Group, Inc., 1950 Franklin, 18th Floor, Oakland, CA 94612, (510) 987-2712
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Contents

In reviewing the comments, it became apparent that there were a number of controversial items to which many stakeholders held strong points of view and which represent some of the more controversial aspects of the Enterprise Zone vouchering program. For the ease of the stakeholders, these items have been addressed first, and at some length, in the first section entitled "Major Issues." Following this section, there is a section-by-section analysis, concluding with a section on miscellaneous comments.

Major Issues

1. Cross-Jurisdictional Vouchering

During this comment period – as well as during recent Legislative hearings, newspaper articles, and stakeholder meetings - the issue of cross-jurisdictional vouchers appears to be one of the most controversial of Enterprise Zone practices. The term "cross-jurisdictional vouchers" refers to the practice of a business located in one Enterprise Zone submitting an application for a voucher to the administrator of an Enterprise Zone other than the one in which the business is located.

A variety of justifications are raised to support such practices. Some have argued that some zones do not have sufficient recourses to perform the task of issuing vouchers and that there is no explicit statutory prohibition. *CM* and *MD*. Another believed that with the standardization of vouchering practices across jurisdictions that will be brought about by these regulations, it is appropriate to allow for multi-zone businesses, that is, businesses with presence in multiple zones, to be able to seek hiring tax credit vouchers for all of their locations from one zone in which they have a presence rather than from the five or ten or more zone managers in which the business has operations. With effective reporting requirements and standardized, vouchering practices and criteria, this commenter argued that there is no reason for the state to limit cross-jurisdictional vouchering for multi-zone businesses. *IKR*

A majority of commenters opposed the issuance of cross-jurisdictional vouchers. Some pointed out that the practice is not authorized by the statute and contradicts the purpose of the program which is to spur local investment, local business expansion and local job creation. *LG* Another noted that only the local zone manager is familiar with the local zone's clients. *JTS* Many objected to the department's proposed use of terms like "local zones" and "remote zones" (used in the context of allowing the proposed delegation of vouchering responsibilities) because the terms appeared to encourage the use of cross jurisdictional vouchers, which the commenters opposed. *JB*, *LS*, *FTB, JFF, LG*, and *LM*.

On a policy level, HCD agrees with the commenters who believe that cross-jurisdictional vouchering is inconsistent with the notion of requiring local zone administrators to responsibly administer activities within an Enterprise Zone and who consider the practice as a means of "voucher shopping" to get the easiest terms. In HCD's focus groups, most large employers indicated that hiring was done locally, and there was no need for central filing. Moreover, Franchise Tax Board (FTB) audits have shown that, in practice, cross-jurisdictional vouchering shows a high level of inadequate documentation and/or record-keeping by the issuing administrator. Permitting cross-jurisdictional vouchering would also significantly impair the enterprise zone's reporting, accounting and tracking capabilities because it would not know what vouchers had been issued, to whom, for what businesses, and under what categories.

Moreover, in addition to appearing inconsistent with the intended policies of Enterprise Zones, HCD has determined that cross-jurisdictional vouchering is not authorized by the governing statutes. In an opinion dated March 7, 2006, the department's Legal Affairs Division concluded that paragraph (1) of subdivision (c) of §§ 17053.74 and 23622.7 of the Revenue and Taxation Code ("R&TC") authorizes the issuance of a certificate (voucher) for a person employed at a business located in an enterprise zone only by the local government that administers the zone in which that business is located.

The revised regulations, therefore, do not allow for the issuance of cross-jurisdictional vouchers. However, a zone governing body or zone manager may contract for administrative services with respect to its zone, which could include a contract with another zone, to perform services which could include the review of voucher applications. But, the local zone governing body or zone manager will remain wholly responsible for the administration of their own zone, and the local zone is the only entity that has the authority to issue the voucher. This responsibility cannot be delegated to or assumed by another entity that is not statutorily authorized to issue vouchers for the zone. Among other consequences of this conclusion, the definitions and use of the terms "local zone" and "remote zone" have been deleted from the regulations.

2. Retroactive Vouchering

Retroactive Vouchering refers to the practice of businesses seeking vouchers in order to obtain employment tax credits for qualified employees hired prior to the current tax year. It raises one of the philosophical disagreements amongst those interested in the

Enterprise Zone program. Although there were no specific comments made during this rule-making process, the department is aware through legislative hearings, newspaper articles, and internal discussions that many stakeholders believe that the hiring tax credits should be granted only as an incentive to hiring hard-to-hire employees. When so viewed, the issuance of a voucher for past hires would not seem to meet the purposes of this point of view.

On the other hand, many stakeholders, including most who commented during the rule-making process, appear to believe that the voucher is intended to be both an incentive and a reward for businesses that locate in designated Enterprise Zones and which hire qualified employees. To these proponents, the tax credit is offered to those who have acted in a manner consistent with these legislative purposes. These commenters noted that in the absence of specific guidance, individual zones apply different standards resulting in a disservice to businesses located in Enterprise Zones. These commenters encourage the department to provide some certainty on this topic. *LG, JFF, IKR, CM and* MD. The department believes that the inconsistent standards used by various enterprise zones, which results in an unwillingness by some zones to grant retroactive vouchers when other zones freely grant the vouchers, provides an undesirable incentive for cross-jurisdictional vouchers.

It is the department's understanding that the FTB permits taxpayers to claim a tax credit, typically by amending a previously submitted return, within 5 years from the date of the event which would have earned the credit. This would lend support to the commenters who believe that the credit serves as a reward for the type of behaviors the legislature is attempting to encourage. Certainly, receiving the benefits of the reward will serve to incentivize the future behavior of the business, thereby further meeting the Legislative goals of hiring qualified employees.

However, Enterprise Zone law is silent on the subject and, therefore, the question appears to lie in the province of tax law, as implemented by the FTB. Accordingly, HCD provided no draft regulations on this topic in its proposed regulations and does not believe it has the authority to do so, notwithstanding the urging of the commenters. HCD does not seek through these regulations to alter the existing policy of the FTB.

Recognizing that the department cannot regulate in this are, the stakeholders are reminded that an Enterprise Zone may only issue vouchers for employees hired after the zone's date of designation and before the expiration or de-designation of the zone.

3. Eligibility Criteria Hierarchy

The Revenue and Taxation Code provides that an employer who hires a qualified employee is entitled to a valuable tax credit. The credit is worth half of the qualified employee's first year salary up to a salary equivalent of 150% of the minimum wage. The credit continues at a lower percentage for an additional four years (40% the second year; 30% the third year, etc). A qualified employee must meet three general criteria and fall within one of eleven voucher categories. The voucher certifies that the employee meets the eligibility criteria of one of the voucher categories. In the absence

of regulations, some Enterprise Zone administrators placed higher priorities on some voucher categories over others, refusing to issue a voucher under certain categories deemed by the administrator to be of lower priority.

Several stakeholders objected to the practice of prioritizing the voucher categories. On May 27, 2005, the department issued a Management Memo informing stakeholders that it was the department's interpretation that all categories were statutorily of equal priority. The proposed regulations were consistent with this interpretation.

Nevertheless, several commenters thought that in order to ensure standardized vouchering practices and fair treatment of taxpayers across the state, the department should include in the regulations an affirmative statement that any and all eligibility criteria are equally valid for obtaining a voucher and that there is no preference or hierarchy among the vouchering criteria. *IKR, CM* and *MD*.

The vouchering priority issue was not expressly a part of this regulatory proposal because the department continues to believe that the plain language of Revenue and Taxation Code sections 17053.74 and 23622.7 provides no hierarchy or priority among the voucher eligibility categories. These sections state that a tax credit "shall be allowed" to a taxpayer "who employs a qualified employee in an enterprise zone during the taxable year," and that the qualified employee must meet "any of the" eleven voucher categories. Consistent with the interpretation expressed in HCD's earlier Management Memo, regulation section 8450.4 requires that an enterprise zone "shall issue a voucher" requested by an applicant if the employee meets the qualification criteria, provides adequate documentation thereof (section 8450.5), and provides the other information required in the application and voucher (section 8450.3).

Distinct from this voucher priority issue is the *employment* priority set forth in subdivision (b)(4)(B) of the R&TC sections. This subdivision states that "[p]riority for employment shall be provided to an individual enrolled in a qualified program" under the JTPA, GAIN, or the WOTC, "or its successor." The employment priority is exclusively within the control of the employer, whereas the issuance of the vouchers is within the control the enterprise zone. The employment priority applicable to the employer should not be confused with issuance of vouchers, as there is no priority among the vouchering categories. To this end, the proposed regulations will require a statement by the employer/applicant that it has complied with the statutory requirement regarding employment priority.

4. Fixed Location of Business

The proposed regulations include a requirement that a business have a fixed location within the boundaries of the designated Enterprise Zone. Several commenters objected to (though a few supported) the requirement for a business applicant for a voucher to have a worksite with a fixed location in the zone. These commenters maintained that the statutory requirement to be "engaged in a trade or business within an enterprise zone" does not necessarily mean a fixed location. An example cited was a construction company, without an office in the zone, that sends workers into the zone to work on a construction site.

The purpose of the Enterprise Zone program is to attract businesses to poorer areas of the state which have suffered from dis-investment. The entire purpose of requiring local efforts and providing state tax incentives is to bring businesses to communities in which they might not otherwise choose to site a factory or commercial facility. It is a program about a "zone". This view is strongly supported by the statutory scheme itself as laid out in the Government Code. Examples of encouraged local government incentives in GC § 7073 include favorable building codes, zoning laws, general development plans, rent controls, fees for applications, permits and local government services, business license taxes, expansion of infrastructure, targeting of federal block grants, rent and housing assistance funds, and local bond issues. Government Code § 7077 authorizes state and local agencies to lease land at below fair market value to businesses locating in enterprise zones. GC §§ 7079-7084 authorize and/or require various state agencies to give preference to businesses located in an enterprise zone for small business loans, alternative energy systems, training for unemployed individuals who live in the zone, and contracts for goods and services produced at worksites located in zones.

The previous experience of HCD and its predecessor agency in administering the EZ program has led HCD to believe in the need to focus the program to direct valuable tax credit incentives more precisely at the attainment of identifiable, long-term economic benefits in zones. Again, this implies the permanent, fixed, long-term business located in the zones, where there is reasonable hope that the benefit will endure past the expiration of the zone designation.

Based on the above, HCD does not believe the example of transient type activity cited by the commenters is the kind of business the EZ program is intended to encourage. Such a business would not necessarily have a business location, as distinct from a temporary worksite, in <u>any</u> zone. This would make that business's application for a voucher a matter of happenstance of where a temporary work-site happens to be located rather than a business decision about where to locate a business. The status of "qualified employee" for this kind of business would give virtually no hope of permanent employment for zone residents. HCD believes the phrase "engaged in a trade or business in an enterprise zone" means a trade or business <u>located</u> there.

Therefore, on this point the regulations remain unchanged.

5. Requirement for 90% and 50% of Worktime in the Zone

The Revenue and Taxation Code requires that eligible employees satisfy four general criteria in order to be a "qualified employee" (*see, e.g.*, §23622.7(b)(4)(A)(i)-(iv)). The first two criteria are: (i) At least 90 percent of (the employee's) services for the taxpayer during the taxable year are directly related to the conduct of the taxpayer's trade or business located in an enterprise zone; and (ii) [The employee] performs at least 50 percent of his or her services for the taxpayer during the taxable year in an enterprise zone. The fourth criterion is that the employee falls within any of the eleven vouchering categories (§23622.7(b)(4)(A)(iv)(I) – (IX)).

As indicated in Subdivision 23622.7(c)(1), the taxpayer must obtain a voucher that "provides that a qualified employee meets the eligibility requirements specified in clause (iv) of subparagraph (A) of paragraph (4) of subdivision (b)," which is the fourth criterion. Thus, the voucher does not address, or certify, that the first two criteria are met, as these are annual conditions that can only be determined retrospectively at the end of the taxable year. These criteria must be verified on an annual basis through the Franchise Tax Board in order for a taxpayer to qualify for the tax credit.

The proposed regulations indirectly referenced the second criterion (the 50% of services) in several places, such as in the definition of "worksite," the issuance of vouchers, and the content of the voucher. Multiple comments were made about these requirements. Several commenters suggested that the meeting of these criteria should be a retroactive examination done at the time of the taxpayer's claim to the Franchise Tax Board for a hiring tax credit. Other commenters pointed out that the 50% requirement is related to obtaining the tax credit and has nothing to do with the eligibility for issuing the voucher, that it is an annual, year-end test, and that it cannot be attested to at the time of a voucher request. These commenters urged HCD to delete references to these requirements for the hiring credit and defer this issue as an FTB audit issue.

Because the first two eligibility criteria (the 90% and 50% requirements), are outside the scope of the voucher and cannot be verified at the time of a voucher request, the department has deleted all references to these criteria in the proposed regulations. However, the Department is mindful of the potential uncertainty regarding the meaning of the 90% and 50% requirements and is committed to working with the FTB and enterprise zones to provide guidance to all interested parties.

6. Effective Date

Several commenters urged a specific or general prospective effective date for the regulations in order to ensure a reasonable passage of time between the adoption of the regulations and adjustments by the affected parties. *ED* and *CM*.

Prior to initiating the rule-making process the department had a number of stakeholder meetings, including a round to describe the policy decisions that would be included in the proposed regulations. The proposed regulations have been in circulation for more than 6 months and it will be close to a full year between the proposal and the final

adoption, and the APA provides the statutory time frames before regulations become effective. The department, therefore, believes that the public notice and review process provides adequate notice of the content of the final regulations, without additional delays. The regulations, therefore, will take effect as prescribed by law – generally 30 days after final approval by the Office of Administrative Law (OAL). All vouchers issued after the effective date shall be subject to these regulations.

7. Confidentiality

In response to the documentation requirements for obtaining a voucher, commenters expressed concern about the need to protect the confidentiality of personal information provided by prospective employees, and questioned requiring social security numbers (SSNs). The department has responded to each of these particulars in the discussion of the appropriate sections. In general, HCD agrees with the need for protection of personal information, and has added more specific language requiring the confidential use and storage of this information, and limiting its possession and dissemination to the original provider, the applicant business, zone administrators, HCD and the FTB.

HCD acknowledges the sensitive nature of the social security number. The SSN is important for, among other uses, the tracking of repeat vouchering of an employee. The common use of this number for identification purposes, and the lack of an adequate suggested alternative, leads the department to conclude that it must retain it as a necessary identifier. However, Subdivision 8450.3(a)(1) and (b)(2) will authorize the use of an "other identifying number" if an acceptable one can be defined and if approved by HCD. Meanwhile, HCD believes the additional confidentiality provisions will give protection to this use of the SSN that is comparable to that provided by other users.

8. Definition of "Ex-Offender"

Numerous commenters objected to limiting the voucher eligibility category of "ex-offenders" to felony cases. They suggested that many misdemeanor offenses become de facto barriers to employment that should be recognized as justification for vouchers.

HCD accepts the thrust of these comments, but still believes it important to provide a definition that is not so broad as to allow the type of minor infractions (like traffic tickets) that do not stand as a sufficient barrier to employment to justify the granting of a voucher. Therefore, there must be a clear floor under the definition of offenses that can be accepted as barriers to employment and justifications for hiring tax credits.

In response to the comments, the regulations have been changed to define ex-offender as a person who has been convicted of a felony or a misdemeanor offense punishable by incarceration, or a person charged with a felony or a misdemeanor punishable by incarceration, but placed on probation by a state court without a finding of guilt.

9. Agents

Commenters requested specific definitions and authority for “applicant’s representatives,” “vouchering agents” and equivalent terms, to discuss individuals or organizations hired to prepare and file applications for vouchers on behalf of business applicants, or to issue vouchers on behalf of zones. HCD believes these comments stem largely from the expanded use of consultants and tax experts which have been hired in recent years both by the businesses located within Enterprise Zones and by the Zones to help them in the administration of the program.

While HCD understands that the complexities of the tax laws frequently call for technical assistance by the businesses ultimately it is the applicant and the Enterprise Zones which are regulated through these regulations – not the employees, contractors and/or agents.

Critical to the effective administration of an enterprise zone is that the responsibility and control of activities in the zone by the enterprise zone itself. This responsibility clearly extends to a zone’s vouchering program, as reflected in the statutes, zone application, and MOU between the zone and the state. Thus, an enterprise zone remains wholly responsible for the administration of the zone, including the issuance of vouchers and, as noted above in the section on **Cross-Jurisdictional Vouchers**, this responsibility cannot be delegated or assumed. Accordingly, HCD has determined that there is no need for these requested definitions.

The decision not to define or regulate contractors and/or agents does not mean that a zone cannot contract with a third party to perform an administrative function for the zone. For example, regulation § 8450.2(a)(8) permits a zone governing body to contract with a third party to process voucher applications pursuant to a written agreement, but requires the zone to keep copies of all vouchers and applications processed. Similarly, as with our personal income taxes, an applicant may contract with another party to prepare applications for vouchers, but the applicant remains responsible for the content of any application submitted on its behalf and should keep copies of the application and voucher for each employee. This record-keeping requirement is expressly set forth in the Revenue and Taxation Code which requires the applicant (*i.e.*, taxpayer) to retain a copy of the certification and provide it to the FTB upon request. Obviously, the application would be evidence supporting the valid issuance of the voucher, and therefore the applicant would want to keep a copy of that as well.

Specific Comments

Note: Section numbering is as it was in the initial draft regulations, to correspond with numbers cited in the comments. In some cases, however, numbering in the final version of the regulations is now different because of revisions.

Section 8431. Definitions

(This existing section is proposed to be amended.)

8431(b) "Certificate": *IKR* supported HCD's efforts to develop a standard form for vouchering. *CM* pointed out a typographical error ("8450.2" should be "8450.3"), and noted that the term "certificate" (or voucher) was confusingly defined to include characteristics of the voucher application as well. *CM* also asserted that the FTB is not authorized to monitor the vouchering process and that the definition improperly expanded the term "certification" as used in the R&TC.

Response: The typographical error has been corrected. HCD acknowledges the potential confusion between a certificate or voucher, and the *application* for a certificate or voucher, and the regulations have been revised to distinguish between the two. The "certificate" or "voucher" will now refer only to the document issued by the zone manager to the employer verifying that a specified employee has been found to meet the qualifications for granting of the voucher by the zone manager. Also, this section does not authorize the Franchise Tax Board to monitor the vouchering process. However, HCD's understanding is that the Board of Equalization has determined that the FTB has the power to review a voucher's supporting documentation (which would be contained in the application), if this is what the commenter means by monitoring the vouchering process. These regulations do not intend to expand or circumscribe the FTB's authority in any way. HCD disagrees that the definition improperly expands the term "certification" as used in the R&TC. Such term is not defined in the R&TC with respect to the enterprise zone program.

8431(e) "Enterprise Zone Manager": *FA* noted that some zones have divided zone manager functions between separate marketing and vouchering activities. *DS* supported the idea that a zone manager need not be a public sector entity.

Response: These regulations are not intended to specify how each local zone organizes its personnel for performance of the enterprise zone function. As a matter of convenience, the regulations have used the term "enterprise zone manager" to refer to whatever person or entity actively manages the day-to-day activities of a zone in contrast to the local government overseeing the zone. However, for reporting and accountability purposes, the Department would recommend that each zone designate a single person ultimately responsible for assuring that a zone complies with the enterprise zone statutes and regulations. HCD agrees that the zone manager need not be a public sector entity. (See also **Major Issues**).

8431(g) "Qualified Employee": *JB* and *CM* both objected that the definition of

"Qualified Employee" has been amended to include documentation requirements additional to the provisions of the R&TC, and that this exceeds HCD's regulatory authority.

Response: HCD has removed from the definition the qualifying phrase "and who has met the documentation requirements of Section 8450.5 or Section 8450.6." The definition of "Qualified Employee" is now the same as it is defined in the R&TC. However, before a zone manager issues a certificate or voucher to a taxpayer certifying that the specified employee is "qualified", the taxpayer will have to provide the documentation required by Sections 8450.3 and 8450.5.

Additional definitions suggested by commenters:

In regulations, a definition may be used as a means of shorthand (e.g., "Act" may refer to multiple code sections). Definitions also are helpful in explaining terms of art (e.g., the proposed definition of a "memorandum of understanding"). In some cases, definitions from statute are repeated in regulation for ease of reference for users who may not have ready reference to code books. However, this practice generally is discouraged by the Office of Administrative Law. One or more commenters suggested adding definitions of additional terms. The proposed terms and the Department's responses follow.

- "Member of a targeted group" This term is used in subdivision 8450.5(b)(5) and specifically refers to a member of a targeted group as defined in Internal Revenue Code Section 51(d). The definition in IRC Sec. 51(d) is very lengthy. For this reason, it is cross referenced in these regulations rather than being repeated. Thus, no change is being made to the regulations.
- "Family" This term is not used in the proposed regulations and therefore no definition is necessary.
- "Qualified Veteran" This term is not used in the proposed regulations and therefore no definition is necessary.
- "Displaced Homemaker" This is a term used by WIA, but is not used in the state enterprise zone statutes or the proposed regulations and therefore no definition is necessary.
- "Vouchering Agent" Zones or applicants may use agents, but formal responsibility will be retained by zones and applicants for actions taken by their appointed or contracted representatives. (Also, see the discussion above for Subdivision 8431(e), and **Major Issues**). These regulations do not deal with, or regulate the use of, agents. Therefore, no definition is necessary.
- "Voucher Application" Regulation Section 8450.3 has been amended to clearly distinguish between the voucher application and the voucher issued to the taxpayer. With these changes, it is HCD's opinion that no additional definition is necessary.
- "Long-Term Unemployed" This term appears in subdivision (b)(4)(A)(iv)(IV)(cc) of Revenue and Taxation Code Section 17053.74 and 23622.7. A definition of this term has been added meaning current and continuous unemployment lasting for 15 weeks or more. This definition is the same definition for long-term

unemployment used by the California Employment Development Department in its Labor Market Information definitions.

In response to various other comments, definitions have also been added for the following terms:

- "Application"
- "Conflict of interest"
- "Household"
- "Immediately preceding"
- "Veteran"

Although these are new definitions, all these terms were contained with some explanation within the body of the proposed regulations.

In addition to other definitions discussed below, the following definitions in subdivisions 8450(c) – (j), (o), (p) and (r) have also been deleted and the applicable language included in the appropriate sections in the regulations:

- "Dislocated worker due to layoff"
- "Dislocated worker due to plant closure"
- "Dislocated worker due to long-term unemployment"
- "Dislocated former self-employed worker"
- "Dislocated civilian worker due to military base closure"
- "Dislocated worker due to separation from the military"
- "Dislocated worker due to seasonal unemployment"
- "Dislocated worker due to Clean Air Act compliance"
- "Native American"
- "Recipient of public assistance"
- "TEA resident"

One commenter requested the addition of definitions that are duplicative of definitions for employee qualifying criteria in the R&TC. The Administrative Procedures Act generally discourages the repetition of statutory language in statute. In order to follow this guidance and keep the regulations shorter, the Department declines to repeat R&TC definitions in regulation.

A commenter also pointed out a typographical error in a reference to R&TC code section 17053.7 (should be 17053.74). *JM*, *JB*, *JP*, *LK*, *LG*, *LS*, *LM*, *VS*, *JFF*. This typographical error has been corrected.

Section 8450. Definitions

(This and the following sections are part of a proposed new Article 14 titled "Enterprise Zone Administration and Issuance of Vouchers.")

Sec. 8450(a) "Applicant": One commenter favored removing the second sentence about businesses with more than one location, to make it clear that all voucher applications should be filed with the local enterprise zone. Another objected to this requirement, and to the fact that it would end the long-standing practice of cross-jurisdictional vouchering, and maintained that the EZ hiring tax credit is a statewide credit, and that "engaged in business within a zone" does not require a fixed location there. *GB*, *JB*.

Several commenters proposed clarifying the complexities of using agents, and of businesses being located in "local" or "remote" zones. *LG*, *LS*, *CM*, *JFF*.

Response: HCD agrees that all voucher applications should be filed with the zone in which the business is located. To be consistent with the fixed business location requirement, cross-jurisdictional vouchering prohibition, and agency requirements, the second sentence of the definition has been deleted. The intent is not to prevent the use of agents or consultants. (See **Major Issues**.)

§8450(b) "Disabled Individual": *CM* asserted that the definition of "disabled individual" was misleading since the cited statutory provision also includes Vietnam veterans and recently separated veterans.

Response: HCD agrees. For clarification, the definition of "disabled individual" has been deleted. The relevant statutory language will be included in the applicable regulations. Also, a definition of "veteran" has been added, consistent with the definition used in the JTPA.

Sec. 8450(k) "Doing business in the zone" and Sec. 8450(s) "Worksite": *JB* objected to the proposed definition of "doing business in the zone" because it is keyed to the definition of "worksite" which would require a business to have at least one employee perform at least 50% of his or her services in the zone. *JB* also asserts that this definition of "worksite" fails to follow the R&TC statute, which requires a "taxpayer" only to be engaged in a trade or business in the zone.

Response: See the discussion above under **Major Issues** #4 and #5. HCD believes that "engaged in a trade or business" in a zone means having a business address in the zone. The 50% requirement has been deleted from the regulations and left as a matter between a taxpayer and the Franchise Tax Board. The definitions for "doing business in the zone" and "worksite" have been deleted.

8450(l) "Economically Disadvantaged Individual": Numerous commenters criticized the proposed definition of "Economically Disadvantaged Individual" as being: 1) inconsistent with the documentation required by proposed § 8450.5(c); 2) an incomplete conflation of the WIA-eligible categories, "economically disadvantaged youth" and "economically disadvantaged individual;" 3) different from terminology used in previous guidelines established by HCD's predecessor, the California Technology, Trade and Commerce Agency; and 4) an unauthorized expansion of statutory requirements. Alternative definitions were proposed. The income criteria were questioned as incomplete. The use of EDD terminology and WIA criteria were

questioned, and the use of older JTPA criteria was suggested. It was noted that "Economically disadvantaged" terminology is no longer in use by WIA. The proposed 80% of area median income criterion, it was noted, would be significantly higher than the alternative federal "lower living standard (LLSIL) income." *JH*, *JM*, *FA*, *GB*, *JB*, *PRDT*, *JP*, *LK*, *EJ*, *ED*, *LG*, *LS*, *FTB*, *DS*, *CM*, *LM*, *VS*, *JFF, JA*.

Response: The terms "economically disadvantaged individual" and "economically disadvantaged youth" will be included in the same definition. The regulation will incorporate the HUD definition of very-low income adjusted for household size and location. The R&TC statutes do not define "economically disadvantaged." To provide a common and well-understood definition, HCD is incorporating the widely-accepted income measure used to qualify resident incomes in state housing programs. Non-economic disadvantages will not be included in this definition as these are outside the scope of the statutory language. An employee with non-economic disadvantages or barriers, such as those described in the WIA Technical Assistance Guide, may still qualify under the WIA eligibility category if the applicable requirements are satisfied.

While WIA may no longer use the term "economically disadvantaged," the R&TC still uses this terminology, and the EZ program regulations must comply with its governing state statutes. Thus, the terminology in the R&TC will be used in these regulations.

HCD disagrees with the suggestion to retain criteria from a superseded program (JTPA), rather than use those from the current program (WIA), particularly since the statute requires the use of the successor program (see R&TC § 23622.7(b)(4)(A)(iv)(I)).

8450(m) "Ex-offender": Numerous commenters objected that the definition of ex-offender as limited to felony offenses is unauthorized by law, too narrow, and thwarts program intent. Most proposed replacing "felony" with "misdemeanor or felony." Commenters also proposed adding some limit to eligible types of misdemeanor, such as allowing "felony or criminal misdemeanor," or excluding "infractions." *MS*, *BW*, *JM*, *GB*, *JB*, *PRDT*, *JP*, *LK*, *EJ*, *LG*, *IKR*, *DS*, *CM* and *JFF*.

Response: See the discussion above under **Major Issues** #8. The regulations have been changed to expand the definition to cover more persons whose offense may be a barrier to employment. Also, excluded from the definition is a person whose record has been expunged, since an expunged record does not create a barrier to employment.

8450(n) "Local Zone", 8450(q) "Remote Zone": Multiple commenters criticized the definition of "local zone" as unclear and/or unsupported by the statutes, and the inclusion of the 50% of service requirement, which is a "look-back" issue of tax calculation and payment, and not of voucher issuance. Most recommended removal of the 50% criterion. Commenters suggested a "more encompassing" definition of "local zone," or urged its removal because "local zone" relates to cross-jurisdictional vouchering. *Other commenters urged removal of all references to "Remote Zone"* as the term relates to cross-jurisdictional vouchering, which they oppose*. JB*, *LS*, *FTB JFF, LG, LM*.

Response: HCD Agrees. The terms and definitions "Local zone" and "Remote zone" have been deleted. See also **Major Issues**.

8450(s) "Worksite": Multiple comments were received regarding the 50% test and the fixed geographic location. One commenter felt the 50% test should be made prospective rather than retrospective. Another supported the requirement for a fixed location, but thought the 50% test should be deleted. Others objected to both requirements as going beyond the statutes. Still others felt the 50% test would preclude valid employment that might take the employee outside the zone, such as a delivery driver. One commenter wanted qualified employees to be able to perform their work in multiple zones. Others objected to "fixed location," some on grounds that the requirement might prevent a qualified employee from being able to work anywhere within the zone. One commenter thought the program should accommodate startup companies where no activity occurred in the prior taxable year. *JM*, *GB*, *JB*, *JP*, *LK*, *LG*, *LS*, *FTB*, *IKR*, *JFF*.

Response: See the discussion under **Major Issues** #4 and #5. The definition of "worksite" has been deleted.

Section 8450.1. Designation of Zone Manager and Staffing

8450.1: Commenters requested language be added to require confidential storage and protection of voucher records containing personal information about qualified employees. One suggested that the section's requirement for adequate budgeting or staffing was an argument against permitting cross-jurisdictional vouchering, and also felt the budgeting and staffing requirement should address not only the issuing of vouchers, but also the broad issue of meeting overall zone goals. *JM*, *JP*, *JA*.

Response: As noted in the **Major Issues** section, HCD agrees about the importance of confidentiality, and record-keeping requirements have been added to § 8450.2(a)(3). The zone manager should keep confidential copies of all voucher applications to the zone. All confidential data should be accessible to HCD and the FTB for purposes of audits of voucher issuance policies and procedures. Access to their own applications should be available to applicants and employees. Access to confidential information for a zone should be accessible to zone administrators and other parties authorized by the zone manager to process voucher applications or otherwise participate in the voucher issuance process.

As addressed in the **Major Issues** section, HCD agrees that cross-jurisdictional vouchering is both undesirable and unauthorized.

8450.1(a): Comments included support for the subdivision, improved confidentiality protections, deleting the second sentence (allowing a zone to enter into a written agreement for a non-employee to function as zone manager), HCD assistance if a zone cannot staff its program, objections to the acceptance of non-employee contract zone managers, and potential ambiguities in the reference to zone managers. *JSB*, *JP*, *LG*, *LS*, *JFF*.

Response: HCD agrees regarding the confidentiality issue. (See **Major Issues**.)

HCD does not believe that it should dictate the manner in which a local governing body chooses to staff its Enterprise Zone – whether it be as city/county employees or by contracted consultant help - so long as the ultimate responsibility for zone goals and activities lies with the governing body which submitted the application. HCD's audits are intended to identify problems needing attention, and HCD will provide technical assistance to the extent resources allow. A contracted administrator might provide administrative skills that could help a nonperforming zone. A "third-party non-governmental employee" hired by a zone might be a former zone manager, for example, who could indeed be more than a band-aid. In the event of continued non-performance, HCD can and will de-designate a zone.

HCD (and, apparently, the other reviewers of the regulations) finds the second sentence to be clear as written. Some or all functions of zone management can be contracted out, so long as it is clear that ultimate responsibility for compliance with law and for meeting the zone's goals remains with the contracting authority.

8450.1(b): One commenter suggested that the phrase "permit compliance" should be changed to "ensure compliance." *CM*.

Response: HCD will change the regulation to incorporate this comment.

8450.1(c): Multiple commenters believed the requirement that an enterprise zone not reduce its budget without HCD approval is unnecessary and burdensome on both zones and HCD, given the annual reporting and auditing requirements already built into the program. *JSB*, *LG*, *LS*, *LM* and *JFF*.

Response: Upon designation, the relationship between HCD and a zone becomes a contractual relationship through the MOU. In essence, HCD has selected this zone for designation over others, in significant part, because of the budgetary and staffing commitments made in the application. The regulatory language (including a change from "notice to the Department" to "approval from the Department") requires HCD approval before making an important change in the contractual conditions. This is typical practice in ongoing contractual relationships. Therefore, this requirement remains unchanged.

Section 8450.2. Administration of a Vouchering Program

8450.2(a): One commenter felt the phrase "at a minimum" was vague and unclear. Another raised again the need for improved confidentiality of records, suggested that vouchering plans should be required to provide current Targeted Employment Area (TEA) address ranges, and that the plans should provide for retroactive vouchering. Commenters also pointed out two typographical errors in a R&TC code section reference. *MS*, *JB*, *JP*, *FTB*.

Response: To remove any ambiguity, “at a minimum” has been deleted. Regarding confidentiality, see **Major Issues**.

As to the suggestion that the TEA addresses should be part of the vouchering plan, HCD believes that this additional requirement is not needed and would be burdensome to the zone administrators because HCD keeps these street address ranges as an official record. A copy should be available at the zone office, but it does not seem necessary to make it a regulatory requirement.

Regarding retroactive vouchering, see **Major Issues**.

The typographical error has been corrected.

8450.2(a)(1): One commenter felt that HCD should make sample plans available that include policies and procedures that ensure compliance. *DS*

Response: HCD does, in fact, provide a variety of examples and technical assistance at workshops and on request. However, to require that the examples provided will “ensure compliance” implies a guarantee of legal adequacy and effectiveness which HCD does not feel is appropriate and would tend to stifle innovation and the progressive improvement of the program.

8450.2(a)(2): Commenters requested explicit authority for “applicant’s representatives” to act in the voucher application process for the applicant, and amended language to address retroactive vouchering. Commenters also requested authority for “applicant’s representatives,” and suggested changing “for a voucher” to “requesting a voucher.” One suggested the phrase “as of the date of hire” should be changed to “immediately before the date of hire” to better fit with R&TC statutes. *GB*, *PRDT*, *LK*, *LS*, *CM*, *LM*.

Response: HCD disagrees about adding “or an applicant’s representative” because, though an applicant may hire a representative, the applicant remains the entity responsible for compliance with statutes and regulations. (See **Major Issues**.) The proposed amended language regarding retroactive vouchering is also addressed in the **Major Issues** section.

As suggested, for clarity, HCD has changed “for” to “requesting.” The phrase “immediately preceding,” as used in the statutes, has been used, and defined in § 8450(r) to mean up to 90 days prior.

8450.2(a)(3): Multiple commenters wanted to ensure the confidentiality of records. One suggested listing the parties that would be allowed access to the records. Another wanted clarity on whether voucher applications that were denied, or for which supporting documentation was never submitted, will also be subject to the five year retention of records requirement. *JM*, *PRDT*, *LG*, *LS*, *JFF*.

The FTB recommended deleting the phrase "and Franchise Tax Board practices and procedures," because FTB audit procedures reflect the requirements of law and do not create a new standard. Other commenters felt that all reference to FTB roles

and authority was inappropriate. One also objected to "a clear statement of the basis for the decision" as unclear, and possibly leading to interpretations requiring lengthy narratives. Another asked if HCD will provide a standard voucher application format. *FTB*, *IKR*, *CM*, *LM*.

Response: Throughout the regulations, HCD has added language regarding confidentiality. (See **Major Issues**.) Zones will be required to retain all voucher applications, not just those approved. As requested, references to the FTB have been deleted from this subdivision because it has its own authority to request information on vouchers to determine compliance for tax purposes.

Regarding the "basis for the decision," the word "clear" has been deleted because of its inherent ambiguity.

HCD will provide a voucher application format (see § 8450(b)) to include the information required by §§ 8450.3 and 8450.5.

8450.2(a)(4): Comments included concerns about the effectiveness of the conflict of interest provision, a request for a definition of "agent," "zone employee," "conflict of interest," documentation required to comply, consequences if a conflict of interest occurred, and concern that a zone would not be able to "ensure" compliance. *JB*, *LG*, *LS*, *CM*, *JFF*, *JA*.

Response: The term "agent" has been deleted, consistent with the view explained in the **Major Issues** that the zone governing body, regardless of whether the zone manager is a public employee or a contract employee, or whether zone functions are contracted to another entity entirely, remains responsible for compliance with laws governing the zone's activities. Similarly, the applicant remains responsible for the application regardless of whoever else may participate in its development or represent the applicant.

The language has been changed to require the zone to "certify", rather than "ensure" that the zone manager, and zone staff, is free of conflicts of interest. This requirement is similar to certification requirements for federal community development and housing grant programs. (See also Response to § 8450.2(a)(5) below.) A definition of "conflict of interest" has been added, based on Fair Political Practices Commission usage.

8450.2(a)(5): Commenters asked how the plan can "ensure" consistent administration. *LG*, *LS*.

Response: The language has been changed to require the zone to "certify", rather than "ensure," consistent administration of the zone. It will be the responsibility of the certifying entity to demonstrate during audit that the program has been administered in a manner consistent with the certification.

8450.2(a)(6): Commenters felt that, again, the use of the word "ensure" is problematic, and that it is impractical, costly, and unreasonable for zones to have to notify every business of any change in the plan. *LG*, *LS*, *JFF*.

Response: "Ensure" and the requirement for notification of changes has been deleted.

8450.2(a)(7): Commenters had questions about terminology used, as well as the meaning of the requirement as a whole. *LG*, *LS*, *CM*, *LM*, *JFF*.

Response: Subdivision (a)(7) has been deleted from this subdivision. This information is not necessary for the administration of the vouchering program.

8450.2(a)(8): Multiple commenters requested clarification regarding the use of agents by the zone, the requirements of agreements between the zone and the agent, conflicts of interest, and cross-jurisdictional vouchering. Some commenters suggested particular language, and others requested some existing agreements be grandfathered. *MS*, *GB*, *JSB*, *PRDT*, *LG*, *LS*, *CM*, *JFF*, *JA*.

Response: Consistent with the explanation regarding agents in the **Major Issues**, the subdivision has been revised to better convey that a zone may contract for the performance of any of its administrative functions, but remains responsible for the compliance of employees and contractors with all laws applicable to the zone's activities. This is stated in §§ 8450.2(c) and (d).

HCD regrets if the regulations require revision of existing contractual arrangements. To the best of our knowledge this should be a rare occurrence. One commenter appears to confuse agreements between an applicant and his or her representative, and between a zone and a contract zone manager. It is necessary to make clear that responsibility lies with the zone for all actions taken on behalf of the zone or in its name, and likewise for the applicant. Within the scope of these regulations, only an applicant can apply for a voucher, and only the zone can issue one. Third-party agents can still be engaged so long as the responsibility is clear. In the case of a third-party zone manager, a written agreement to implement the zone's written commitments is appropriate and consistent with this.

Addressing several comments, these regulations do not change any existing vouchering authority in law, but will require written agreements with the zone to exercise it. As noted in the **Major Issues**, HCD's legal counsel has issued an opinion concluding that cross-jurisdictional vouchering is not authorized by statute.

As to the comment regarding conflicts of interest, the certification required by § 8450.2(a)(4) will require the zone to certify that no conflicts of interest exist.

8450.2(b): Numerous commenters criticized this subdivision for its 50% test, on grounds that it relates to tax claims and not voucher issuance. Other commenters commented on the subdivision's implicit acceptance of cross-jurisdictional vouchering, approved limiting it by requiring written agreements, favored eliminating it, with exceptions for businesses that operate in multiple zones, strongly opposed cross-jurisdictional vouchering, or favored it and urged that it be explicitly permitted, at least for businesses located in more than one zone. One commenter expressed concern about expiring zones and suggested that cross-jurisdictional vouchers be permitted after

a zone expires so that an employer could still get a voucher for an eligible employee in an expired zone. *JM*, *GB*, *DH*, *JB*, *JSB*, *PRDT*, *EJ*, *LG*, *LS*, *IKR*, *DS*, *CM*, *LM*, *JFF*, and *JA*.

Response: Subdivision 8450.2(b) has been deleted. Also, as noted in **Major Issues**, cross-jurisdictional vouchering is not permitted. Section 8450.4 has been amended to address the issuance of vouchers after a zone expires.

8450.2(e): One commenter suggested that a sample plan be provided by HCD to zone managers, and then individual zones' vouchering plans should be submitted and approved by HCD prior to audits. The commenter believes this will provide for uniformity and pro-active identification of problems before mistakes can be made. Additionally, these plans would then be readily available for other zones to access, allowing for best practices. *LG*

Response: HCD will provide technical assistance and examples of vouchering plans in workshops or on request, within the limits of its resources. Subdivision 8450.2(d) has been amended to remove references to remote and local zones. See **Major Issues**.

Section 8450.3. Content of a Voucher

8450.3: One commenter asserted that the proposed regulation exceeds HCD's authority to adopt regulations relating to the voucher requirement in the R&TC, subdivisions (b)(4)(A)(iv), and is limited to regulating the issuance of certificates by local governments. *JB*

Response: HCD disagrees. The statutory authority under R&TC sections 23622.7(c)(1) and 17053.74(c)(1) mandates that HCD "develop regulations governing the issuance of certificates." These regulations fall within that mandate.

8450.3: Several commenters questioned the application requirement to include the claimed eligibility category because this information is considered confidential and would not be revealed to the employer. Commenters representing cities indicated that they obtained this information directly from qualified employees and did not share it with employers. Commenters expressed concern that employees may not participate if they cannot be assured that the information will remain confidential. *DH*, *JSB* and *JFF*.

Two commenters suggested that the eligibility category information should not appear on page 1 of the voucher [application], but can be on page four under "DETERMINATION." *PRDT*, *LK*.

Response: One purpose of the EZ program is to induce employers to hire qualified employees. Virtually any employee above the level of day laborer has to trust the employer with sensitive personal information. The applicant employer has to know that an employee qualifies for the tax credit in order to assemble the information supporting

issuance of a voucher and submit it to the zone. Zones will be required to keep confidential records.

An employee's personal information may not have been shared with the business under past procedures, where the employee filed the application with the zone manager. Recent experience indicates it is typical for the employee to transact the hiring with the business, which then sends the application to the zone or its representative. It seems unlikely that a business would hire someone under the expectation that that person was a qualified employee, without knowing the nature of the qualification. The business must have this information to justify its tax credit claim to the FTB. As outlined **Major Issues**, the confidentiality of this information will be emphasized and required. See also §§ 8450.1, 8450.2(a). The eligibility category information is critical information for both the Department and the FTB.

The eligibility category information will be moved off page one of the suggested voucher application format, if possible, but will be required as part of the voucher and the application. Applicants and zones will be expected to retain copies of applications and vouchers.

8450.3: Commenters asked for an explanation of the phrase "sequentially numbered for each zone," expressed concern about inconvenience to zones that already have established numbering systems, and one expressed support for a consistent voucher format approved by HCD. *DH*, *LG*, *CM*, *JFF*, *RW*.

Response: HCD plans to set up a block allocation system for voucher numbers, and will allocate blocks of numbers to zones, in order to check activity levels and fee payments, and to prevent cross-jurisdictional vouchering. HCD regrets instances where numbering systems will change. HCD plans to issue numbers, specify the information required and suggest a format, but not to provide forms. Controlled numbering is an important step to track voucher issuance and prevent misuse of the process.

8450.3(a): One commenter recommended removal of "vouchering agent" as being undefined and inconsistent with existing law. Another shared the concern, but accepted the term. *LG*, *LS*.

Response: "Vouchering agent" is used in § 8450.2(a)(8). The term has been deleted in favor of the more general term "third-party entity," which need not be defined. As used in these regulations, a third-party entity is simply someone a zone or an applicant contracts with to perform functions covered by the regulations, for which the zone or the applicant will remain responsible. With respect to vouchers, a third-party entity may process them, but may not issue vouchers in its own name. The zone cannot delegate this function. See also § 8450.2(a)(8), (c) and (d).

8450.3(b)(1): One commenter questioned the ISOR reasoning for requiring the date of hire on the voucher application and suggested language stating that "as long as employees are hired after the original designation of the EZ and meet all other requirements, a voucher shall be issued." *MS*.

Response: The date of hire is necessary to determine eligibility, which is determined in accordance with applicable statutes and regulations, as well as for FTB purposes. HCD believes it would be inappropriate to include the requested language in this regulation, which merely lists the contents of a voucher. Regulation §8450.4 requires that a zone issue a voucher if the legal requirements are met.

8450.3(b)(1): Several commenters felt the requirement for the applicant to identify whether an employee is hired into a new position or an existing position is difficult for an employer to determine, not required by law or unnecessary for determining eligibility. Others were concerned that such information could be misused to indicate abuse of the voucher system by employers. *JM*, *JP*, *EJ*, *LG*, *DS*, *JFF, RW*.

Response: The distinction between new and existing positions is important to distinguish between "gross jobs added" and "net jobs added." The goals of the program include new, permanent jobs and expansion of the workforce. HCD is tasked to monitor progress toward these goals. In most circumstances an employer may reasonably be expected to know whether a hire is for a new job, an expansion of the workforce, or a vacancy refill. This information is not used to determine eligibility, or to uncover cases of deliberate turnover to increase the number of vouchers, but to determine if businesses are expanding or not.

8450.3(b)(1): Multiple commenters questioned the requirement for "verifiable date of termination if no longer working for the applicant," noting that the voucher is evidence that the qualified employee met the standard eligibility, and termination date is irrelevant on the voucher. A commenter also noted some confusion between voucher and voucher application. *GB*, *DH*, *PRDT*, *LG*, *LS*, *LM* and *JFF*.

Response: HCD agrees and has deleted the language. The regulations have been revised to clearly distinguish between vouchers and voucher applications.

8450.3(b)(1): Commenters noted that an employee's telephone number may not be available, the SSN is important to identify the employee, but suggested using alternative identifiers or a partial SSN. Others felt that clients with fewer resources will have difficulty providing this information, and recommended deletion of the requirement. *PRDT*, *JP*, *LK*, *CTT*, *NB, RW*.

Response: The regulation has been amended to say "telephone number (if applicable)." (See also **Major Issues** on use of the SSN.) No workable alternative identifier has been proposed. The required information has been reduced, but not eliminated. It does not seem particularly unusual or difficult to obtain when hiring someone.

8450.3(b)(2) and (7): Several commenters had concerns or comments about the availability of the information, whether the information is redundant or appropriate in the voucher, or what business classification system is being used. *JM*, *GB*, *DH*, *JP*, *LK*, *EJ*, *DS*, *RW*.

Response: HCD agrees that the number of employees and type of business is not necessary in the voucher content. Subdivision 8450.3(b)(2) has been amended and the information made part of the MOU between HCD and the zone, as defined in § 8431. 8450.3(b)(7) will also be deleted.

8450.3(b)(5) and (10): One commenter felt that these two provisions appear to be redundant. *JB*.

Response: HCD agrees. The signature requirement has been deleted from (b)(5), and (b)(10) has been deleted as redundant. The applicant's signature on the entire application is sufficient as a certification that documents attached are true and correct.

8450.3(b)(5): Commenters variously suggested revising or deleting language for reasons of redundancy or excessiveness, lack of sufficient personal knowledge of the applicant to certify certain information, and suggested removing the references to Section 8450.6 as unnecessary. *PRDT*, *LG*, *CM*.

Response: This provision has been amended to delete unnecessary or redundant requirements, references to § 8450.6 (which itself has been deleted), and the requirement for an attesting signature.

8450.3(b)(6): Numerous commenters said this subdivision should be deleted because it would conflict with EEOC requirements, is not mandatory, is not a requirement for vouchers, was unenforceable, and two of the three programs in the statute are no longer in existence. One commenter (28) provided a summary of its EEO and diversity programs. *JM*, *GB, JP, LK, LG, LS JFF, IKR, LM, RW*

Response: This subdivision requires certification of compliance with a mandated statutory priority in hiring as expressly set forth in the R&TC. The R&TC provision states as follows:

> (B) Priority for employment shall be provided to an individual who is enrolled in a qualified program under the federal Job Training Partnership Act or the Greater Avenues for Independence Act of 1985 or who is eligible as a member of a targeted group under the Work Opportunity Tax Credit (Section 51 of the Internal Revenue Code), or its successor. (Emphasis added.)

In HCD's opinion, this provision is mandatory, not optional or permissive. The HCD regulation simply requires the applicant to state that they complied with the R&TC requirement. To the extent one of the programs (or its successor) listed in the statute is no longer in existence, then there would be no "priority for employment" under such program. To alleviate commenters' concerns about EEOC conflicts or discrimination, HCD will revise the language so that it specifically states that the applicant has "complied with the priority for employment as required by" the R&TC sections.

8450.3(b)(7): One commenter believes this provision fails to follow the Statutes because it would require a business to have a "worksite" in the enterprise zone and the definition of "worksite" fails to follow the Statutes. Another said the provisions are too vague and require clarification, and the word "workplace" should be changed

to “worksite” to conform to Proposed Regulation §8450(a). One commenter thought this section encouraged cross-jurisdictional vouchering, which it opposed. *JB*, *CM*, *LM, RW*

Response: See **Major Issues** regarding worksite and cross-jurisdictional vouchering. The regulation has been revised to indicate that the applicant has a trade or business located in the zone to be consistent with § 8450(a).

8450.3(b)(8): Numerous commenters opposed this provision and the 50% requirement as being a tax provision, outside the purview of the voucher, or that it is too vague and requires additional clarification. *MS*, *JM*, *GB*, *JB*, *JSB*, *PRDT*, *JP*, *LK*, *EJ*, *LG*, *LS*, *CM, LM* and *JFF*.

Response: Subdivision 8450.3(b)(8) has been deleted, as will references to the 50% requirement. See **Major Issues**.

8450.3(b)(9): Numerous commenters oppose this provision as too broad, vague, burdensome and unnecessary. *JSB*, *PRDT*, *LG*, *LS, IKR, CM* and *JFF*.

Response: HCD agrees that the requirements in this subdivision are not appropriate for the voucher application. Subdivision 8450.3(b)(9) will therefore be deleted.

8450.3(b)(10): Numerous commenters variously criticized this subdivision as being too broad, unworkable, calling for confidential information, or inappropriate, and recommended revision or deletion. *MS*, *JM*, *GB*, *JSB*, *JP*, *LK*, *LG*, *LS*, *IKR*, *CM* and *JFF*.

Response: Based on the comments provided, HCD agrees that this subdivision is inappropriate for inclusion in the voucher contents. Subdivision 8450.3(b)(10) will therefore be deleted.

8450.3(c), (c)(2) – (c)(4): Commenters asked for greater clarification of these sections, asked for revisions, and commented on the role of the vouchering agent. *FA*, *DH*, *JSB*, *LG*, *LS* and *JFF*

Response: Subdivision 8450(c) has been deleted in its entirety. The information in subdivisions 8450.3(c)(1) and (4) has been incorporated into § 8450.2, as part of the zone administration requirements rather than voucher content. The function understood by “vouchering agent” has been substantially retained although the term itself has not been used. See also **Major Issues**, and Responses to §§ 8450, 8450(a), 8450.3(a) comments.

Section 8450.4. Required Documentation for Issuance of a Voucher

8450.4: Commenters variously raised concerns about the role of the vouchering agent, recommended certain sections be revised or deleted, questioned the 50% services

provision, or felt the regulation was unnecessarily subjective. *MS*, *JM*, *GB*, *JB*, *JSB*,*JP*,*LK*,*LG*,*LS*,*IKR*,*CM*,*LM* and *JFF.*

Response: With respect to the vouchering agent concerns, see Response to § 8450.3(c), above. Subdivision 8450.4(b) has been deleted to resolve the 50% services concern. The phrase "to the satisfaction of the enterprise zone manager or vouchering agent" has been deleted to eliminate potential subjectivity.

Also, as mentioned in the response to comments to subdivision 8450.2(b), above, one commenter expressed concern about the issuance of vouchers after the expiration of a zone. To address this concern, a new subdivision 8450.4(b) has been added to allow the enterprise zone to continue to issue vouchers for 12 months after the zone expiration date, or to delegate this authority pursuant to a written agreement with the local social services agency, another statutorily-authorized entity from which an employer may obtain a voucher.

Section 8450.5. Acceptable Documentation

8450.5: One commenter requested clarification for a "look back" period; i.e. how far back in the past can we look to determine that a person was on public assistance, eligible for a free lunch program, etc. *JH*

Response: HCD believes this issue lies in the purview of the FTB and is not appropriate for these regulations. See **Major Issues**.

8450.5: One commenter requested additional language expressly allowing "applicant's representative" to provide information or documents on behalf of the applicant. *GB*

Response: HCD believes this is inappropriate to include in the regulations. The applicant may hire representatives to work on an application, but the applicant remains the legally responsible entity. See **Major Issues**.

8450.5: One commenter felt that the regulations should expressly permit electronic signatures and/or electronic applications. *LK*

Response: HCD does not consider this an appropriate subject for regulation. The department will employ these and other improved technologies when they are determined to be appropriate and secure.

8450.5: A commenter said the regulations need to also provide a list of acceptable documentation for Veterans and Displaced Homemaker. *LG*

Response: Subdivision 8450.5(h) has been revised and a new subdivision 8450.5(l) has been added to address documentation to demonstrate applicable veteran status. The displaced homemaker category is not a category recognized in the R&TC and will therefore not be added to the regulations.

8450.5: A commenter stated that § 8450.5 does not clearly state that the Workforce Investment Act of 1998 (WIA) is the successor program to the Job Training Partnership Act. Also, this section does not state that eligibility for the WIA is determined to be enrollment in the WIA program. Limiting eligibility for WIA to those eligible or enrolled in Core B or Intensive Services leaves out the following categories of individuals: youth, those served by the WIA 15% or 25% funds, and also adults and dislocated workers who are in training (and thus beyond Core B and Intensive Services). *VS*

Response: Please refer to the discussion of these issues in the FSOR for section 8450.5. The assertion that "eligibility" for WIA is identical to "enrollment" seems more theoretical than practical. The comment seems to imply that determination of WIA eligibility for purposes of determining qualified employee status, for an employee who is not enrolled in WIA, should be acceptable when done by an applicant or a zone manager. HCD believes that eligibility for WIA can be properly determined only by a competent WIA authority. Further, the best interest of an employee who is WIA-eligible is served when he or she is actually enrolled, and not merely counted as eligible by an applicant for purposes of a tax credit. An applicant who claims WIA eligibility for an employee should help ensure that the employee is enrolled.

HCD agrees that WIA is the successor to JTPA. References to JTPA and GAIN has been deleted from the regulations, since only WIA and CalWorks enrollment will be relevant to qualified employee status when the regulations take effect.

8450.5(a): Two commenters wanted to add "or designee" after "zone manager, " and "or agent" after "employee." Another suggested revising the statement to be in the affirmative, rather than negative. *LG*,*LS*,*CM*.

Response: This subdivision has been deleted because it is duplicative of section 8450.4. HCD believes a change to add designee or agent would be inappropriate. A zone manager (or an applicant) may contract or assign functions, but not responsibility for official actions taken in his or her name. A "designee" (or "agent") would have no statutory significance.

8450.5(b): A commenter requested clarification on what constitutes "…immediately prior to commencement of employment…". *FA*

Response: A definition of "immediately preceding" has been added to § 8450 to mean within the previous 90 days. This 90-day time period was suggested by the FTB and is consistent with its interpretation of the R&TC statutes.

8450.5(b): One commenter stated that 8450.5(b) fails to follow the statute because it would require double vouchering. It would require a local JTPA, GAIN, CalWorks, WIA, Work Opportunity Tax Credit agency to issue documentation (i.e., certification) that the employee met the eligibility criteria of the statutes. If a local JTPA, GAIN, CalWorks, WIA, Work Opportunity Tax Credit agency issues a document/certification that an employee meets the eligibility Statutes, then it would be entirely unnecessary for the applicant to seek an additional certification/voucher from the zone manager. There is nothing in the Statutes that would limit zone managers from issuing

vouchers for employees that meet the eligibility criteria relating to JTPA, GAIN, CalWorks, WIA, or Work Opportunity Tax Credit. *JB*

Response: HCD does not agree that documentation from WIA or CalWorks is equivalent to a voucher without actually issuing a voucher, or that eligibility for WIA or CalWorks as determined by an applicant or zone manager is sufficient to justify a voucher. Consistent with our response to comments to 8450.5, above, 1) eligibility for WIA or CalWorks should be determined by those programs, and 2) the best interest of employees means they should be actually enrolled in WIA or CalWorks, and not just declared to be eligible by an applicant or zone manager. Further, a voucher is not legally adequate unless issued by one of the entities listed in the R&TC.

8450.5(b): One commenter noted there does not appear to be uniform requirements statewide for individuals to be enrolled in "Core B" and/or "Intensive Services". She suggested that the criteria to be deemed a qualified zone employee under WIA require enrollment in the California Job Training Automation System by an authorized WIA representative, and due to the "universal access" nature of WIA, eligibility for WIA should be clearly addressed in these regulations. *LG*

Response: Enrollment in the Job Training Automation System is an acceptable documentation of WIA enrollment, but is not the only one. The regulations have been revised to address WIA eligibility. See revised subdivision 8450.5(a)(2).

8450.5(b) and (b)(4): One commenter believes this regulation improperly narrows the scope of R&TC §23622.7(b)(4)(A)(iv)(I) by referring to WIA. *CM*

Response: HCD disagrees that this regulation improperly narrows the scope of the R&TC sections. WIA is the successor to JTPA, and the statute expressly states “or its successor” regarding qualification under the JTPA. The regulation may therefore properly include references to this federal program. (See also discussion regarding the JTPA and WIA in the Final Statement of Reasons.)

8450.5(b)(1) and (2): Two commenters noted that JTPA and GAIN are no longer in existence and that these proposed subdivisions are not needed. *EJ*,*DS*.

Response: HCD agrees. References to JTPA and GAIN have been deleted.

8450.5(b)(1) and (4): One commenter maintained that 8450.5(b)(1) and 8450.5(b)(4) are not necessary, feasible, or consistent with the law, and that these requirements are different than guidelines issued by the Technology Trade and Commerce Agency (TTCA) in 1998 and 2001 (the predecessor agency responsible for the Enterprise Zone program). *ED*

Response: Any “guidelines” issued by TTCA did not, and do not, have the force of law. Such guidelines would appear to constitute underground regulations, i.e., rules of general applicability that interpret or implement a law enforced or administered by an agency that have not complied with the Administrative Procedures Act. The present regulations are being adopted pursuant to an express mandate from the legislature to

develop regulations governing the issuance of vouchers from local governments. HCD believes that these provisions are not only necessary and feasible, but consistent with the law. See also Response 8450.5(b), above.

8450.5(b)(1) - (4): One commenter asserted that the provisions of subdivisions 8450.5(b)(1) – (4) are inconsistent with the plain words of the statute. A summary or restatement of the comments follows:

> *"The requirement that an individual be "determined eligible" for various programs was removed from the statute effective January 1, 1995 by SB 1770. According to the Bill Analysis of Senate Bill 1770, the purpose of the amendment was to "broaden the pool of individuals whom an Enterprise Zone employer can hire and still qualify for the EZ hiring credit." A regulation cannot impose a requirement upon taxpayers that the Legislature has removed from the statute. Further, we believe §§8450(b)(1) and 8450(b)(4) are administratively unfeasible and, therefore, are not necessary. WIA entities are federally funded and the federal funding is limited by the WIA statute. WIA entities are not legally required to provide eligibility determinations for purposes of the EZ hiring credit. There are currently no local JTPA administrators. If there is not process in place whereby a taxpayer can comply with the proposed regulation, why is the proposed regulation necessary? Accordingly, (b)(1) and (4) should be eliminated and replaced with language that provides that: 1) for employees hired on or after July 1, 2000, any acceptable documentation listed in the WIA Eligibility Technical Assistance Guides [TAG] issued by EDD is acceptable for purposes of the EZ hiring credit, and 2) for employees hired before July 1, 2000, any acceptable documentation listed in the JTPA Program Eligibility Table is acceptable." CM*

Response: HCD agrees that WIA entities are not required to provide eligibility determinations. 8450.5(b)(1) has been deleted, and 8450.5(b)(4) has been revised to eliminate mention of documentation of eligibility. As discussed in the Response to 8450.5, above, enrollment is the only way to determine WIA eligibility that is feasible, lawful and in the best interest of the employee.

8450.5(b)(4): One commenter noted that all adults 18 or over are eligible for the 'Adult' program Core B if they have the right to work in the US and have complied with Selective Service requirements. According to the WIA Technical Assistance Guides (TAG), the only requirements that need to be met for Core B are these general program eligibility requirements, not the additional documentation and verification required for intensive services and training. Shouldn't 'eligible for Core B' be eliminated for the same reason that 'eligible for Core A' was removed? *JSB*

Response: HCD agrees. The phrase "eligible for WIA Core B or Intensive Services" has been deleted. See also Response to 8450.5(b), above.

8450.5(b)(4): One commenter stated that current law allows employees to qualify under the enterprise zone program if the employee was either enrolled in WIA or was eligible to receive benefits under the program. This proposed section requires applicants to get a statement from the WIA case manager stating that the employee was either enrolled

in WIA or was eligible to receive benefits. Adding another government agency (i.e., WIA) to the approval process will add significant time and effort to the voucher documentation process. Furthermore, WIA program administrators will have no incentive to process such statements in a timely manner. Therefore, the requirement to obtain a statement from the WIA program administrator should be deleted from the proposed regulations. *EJ*

Response: The regulations has been revised to remove documentation of eligibility. A statement from WIA that an employee is enrolled will remain. See also Response to 8450.5(b), above.

8450.5(b)(4): One commenter felt that this language does not apply to the Stanislaus Zone. The WIA, Workforce and Economic Development efforts are fully partnered to avoid layers of bureaucracy in the process. However, we realize this may be an issue in other zones and could be considered for deletion. *DS*

Response: There does not appear to be a problem if one agency or person acts in more than one official capacity, so long as the appropriate criteria are observed. This subdivision will remain since it may apply to other zones.

8450.5(b)(5): Several commenters recommended deleting the word “local” in this paragraph since all WOTC activity for California employers is conducted from one centralized location in the state. *GB*,*LG*,*LS*, *LM* and *JFF*.

Response: HCD agrees. The term “local” has been deleted.

8450.5(c): Several commenters recommended adding a California drivers license, a state ID card, passport, I-9 or a Resident Alien card to document age over 14. *MS*, *FA*, *DH*,*EJ*,*IKR*,*DS, CM*.

Response: HCD agrees, and subdivision 8450.5(c)(1) has been changed to allow official government documents showing the employee’s age or date of birth.

8450.5(c): One commenter commented that the proposed regulations setting forth the documents necessary to demonstrate that an employee is qualified as "economically disadvantaged" should follow either the proposed regulations’ own definition of "economically disadvantaged" or the Statutes, which obtained the term "economically disadvantaged" from the JTPA. The definition of "economically disadvantaged individual" in Subdivision 8450(1) fails to follow the Statutes and is impossible to administer. Subdivision 8450.4(c) fails to follow the Statutes and fails to follow the definition of "economically disadvantaged" provided in Subdivision 8450(1) of the proposed regulations. *JB*

Response: The definition of “economically disadvantaged” in § 8450(d) has been revised to be consistent with the State Income Limits for the very low income category as published annually by HCD. As discussed in the Final Statement of Reasons, this provides a consistent, well-accepted and understood definition of economically disadvantaged. A person who falls within the very low income category is clearly

financially or economically disadvantaged. The documentation in 8450.5(b)(2) has been revised to be sufficient to show that person meets the definition of economically disadvantaged. The definitions for "economically disadvantaged youth" and "economically disadvantaged individual" have been combined. See also Response to 8450(l), above.

8450.5(c): *JP* noted that these items only address a WIA Eligible Youth and that documentation for an Eligible Adult must be added.

Response: The language has been clarified to address both categories. See immediately preceding Response.

8450.5(c): Multiple commenters suggested alternative language and documentation for the "economically disadvantaged" definition. Representative comments and suggested language follow (see commenters' particular letters for variations):

> *"The terminology in the regs is no longer in use by WIA . The correct terms are "Low-Income Individual" or "Eligible Youth." Documentation for an Eligible Adult must be added. Use the WIA Technical Assistance Definitions for Eligible Youth, Eligible Low-Income Individuals, Homeless, Foster Child, Economic Disadvantage, and individual and/or family income."*
>
> *"To document that the employee is an Eligible Youth:*
> *(A) Birth certificate*
> *(B) Work permit*
> *(C) Baptismal or church record*
> *(D) Driver's license*
> *(E) Government issued Identification Card*
> *(F) Passport*
> *(G) Public assistance social service records*
> *(H) School records*
> *(I) INS I-9 form*
> *(J) Written statement from an individual providing temporary residence, or from a shelter or social service agency*
> *(K) Applicant statement*
>
> *To document that an employee is an eligible low-income individual (18 or older):*
> *(A) Public assistance records printout, public assistance check, public assistance identification card, refugee assistance records/printout, signed statement from Health and Welfare Department*
> *(B) To document individual and/or family income: accountant statement, alimony agreement, award letter from Veterans Administration, bank statements, compensation award letter, court award letter, employer statement, farm or business financial records, pay stubs, pension statement, quarterly estimated tax for self-employed persons (Schedule C), Social Security benefits records, unemployment insurance documents and/or printout*
> *(C) Applicant statement, as last resort.*

To document homelessness: applicant statement, statement from a social service agency or individual providing temporary residence or shelter

To document foster child status: court records/document, county welfare office records/statement, medical card verification of payments made on behalf of the child, written statement from cognizant agency

To document food stamps: authorization to obtain food stamps, food stamp card with current date, food stamp receipt, postmarked food stamp mailer, statement from county welfare office, public assistance records printout

To demonstrate that an employee is a qualified employee as a dislocated worker due to separation from the military, the applicant shall provide one of the following documents demonstrating that the employee's separation from the service was either involuntary honorable discharge or was done pursuant to a special benefits program: Report of discharge from the armed services or the National Guard." JM, *GB*,*JP*,*LK*,*LG*,*LS* and *LM*.

JM adds that "An electronic application for employment with an electronic signature is acceptable." *GB* and*JP*'s letters also include documentation list for "economic disadvantage." *LS*'s letter states the type of definition and acceptable documentation that CAEZ is recommending.

JFF noted that "Economically disadvantaged" terminology is no longer in use by WIA, and commented as follows:

"The correct terms are "Low-Income Individual" or "Eligible Youth" and the criteria are as noted above in the Definitions section. Thus, this Section (c) should read:

To document that the employee is an Eligible Youth:
(A) Birth certificate;
(B) Work permit;
(C) Baptismal or Church Record;
(D) Driver's License;
(E) Government issued Identification Card;
(F) Passport;
(G) Public Assistance/Social Service Records;
(H) School Records;
(I) INS I-9 Form;
(J) Written Statement from an Individual Providing Temporary Residence, or from a Shelter, or Social Service Agency;
(K) Applicant Statement, as last resort. Applicant statement must contain sufficient information (i.e. facts and dates for the zone manager to make a determination) and should include a reasonable explanation as to why the employee could not provide the preferred verifiable documentation. The applicant statement should be signed by the applicant and also by a family member or close friend that can corroborate the statement (not a co-worker, supervisor, nor tax credit consultant). Applicant statements should not be

accepted for reasons of inconvenience to the employer/tax credit consultant/employee or because getting the documentation from the employee is too intrusive.

To document that an employee is an eligible Low-Income Individual, (Adults 18 or older):

(A) Public assistance records print out, Public assistance Check, Public Assistance Identification Card, Refugee Assistance Records/Printout, Signed statement from Health and Welfare Department.
(B) To document Individual and/or Family Income: Accountant Statement, Alimony Agreement, Award Letter from Veterans Administration, Bank Statements, Compensation Award Letter, Court Award Letter, Employer Statement, Farm or Business Financial Records, Pay Stubs, Pension Statement, Quarterly Estimated Tax for Self-Employed Persons (Schedule C), Social Security Benefits Records, Unemployment Insurance Documents and/or Printout, (C) Applicant Statement, as last resort. Please see applicant statement note above.

To document Homeless: Applicant Statement, Statement from a Social Service Agency or Individual Providing Temporary Residence or Shelter.

To document a Foster Child: Court Records/Document, County Welfare Office Records/Statement, Medical Card Verification of Payments Made on Behalf of the Child, Written Statement from Cognizant Agency, Applicant Statement as a last resort. Please see applicant statement note above.

To document Food Stamps: Authorization of Obtain Food Stamps, Food Stamp Card with Current Date, Food Stamp Receipt, Postmarked Food Stamp Mailer, Statement from County Welfare Office, Public Assistance Records/Printout."

PRDT recommended adding an employee affidavit as substitute documentation.

FTB commented as follows:

"(c) – Documentation is required from both (1) and (2). Current language indicates documentation from either (1) or (2) is acceptable.
(c)(1) A driver's license may also be a valid indicator of age (c)(1);
(c)(2) The current statues/programs require an analysis of family economic situation. Language in (c)(2) is silent regarding family relevance to test.

Language is also currently inconsistent with Section 8450(1) language wherein 2 tests are identified for determining economic disadvantage. First test is economic, second is a barrier specific test. This section addresses documentation only for the first test;"

Response: The regulations have been revised to address the above comments. Although "economically disadvantaged" terminology may no longer be used by WIA, the R&TC, which governs the EZ program, uses this language. To be consistent with the R&TC statutes, the regulation has been revised to require documentation to show both age and economic disadvantage. As acceptable evidence of age, the regulation has been amended to allow an official identification card or other government document that shows the individual's age or date of birth..

With the definition of "economically disadvantaged" in subdivision 8450(d) revised to be consistent with the State Income Limits for the very low income category, the other categories, such as homelessness, foster child, food stamps, etc., and the suggested documentation for these categories, are unnecessary.

The language regarding personal disadvantage has been deleted because this is outside the scope of the applicable statutes. The R&TC statutes require economic disadvantage, but not other "personal disadvantage." Such information may be relevant for purposes of WIA, in which case the individual may qualify under that category (e.g., Section 23622.7(b)(4)(A)(iv)(I)). Also, subdivision 8450(d) has been revised to eliminate the barrier specific language.

As for the use of electronic technology, HCD will make use of improved technology such as electronic signatures when it is within our resources and widely accepted as secure.

As to accepting an employee statement or application, HCD believes more reliable and easily-obtained alternative documentation exists and therefore an affidavit or applicant statement has not been added.

8450.5(c)(2): *MS* stated:

> *"the ISOR on page 5 explains that, "The operational definition of 'lower income' has been borrowed from Health and Safety Code Sec. 50079.5 which defines 'lower income' as 80% or below the area median income for purposes of the State's housing programs." However, in letters (A) through (H) no documentation options are given to establish an income level outside of other government assistance programs. There should be acceptable documentation, such as a report from the EDD or the IRS, showing the income of the individual prior to hire. If this income level is 80% or below the guidelines provided at sources such as http://www.hcd.ca.gov/hpd/hrc/rep/state/incNote.html, then this should establish the "low income" requirement*"

JM and *FACM* felt that additional documents should be added to document economic disadvantage, such as:

> *"To document individual and/or family income: accountant statement, alimony agreement, award letter from Veterans Administration, bank statements, compensation award letter, court award letter, employer statement, farm or business financial records, pay stubs, pension statement, quarterly estimated tax*

for self-employed persons (Schedule C), Social Security benefits records, Unemployment Insurance documents and/or printout, applicant statement."

EJ and *DS* commented that

"the documents included in this section continue the idea that economically disadvantaged individuals are youths. Certainly youths should qualify, but individuals of any age should also qualify provided they meet the income test based on family size. Accordingly, documents that validate these issues should be added to the list like a print out from EDD showing income history and a statement from the employee documenting family size"

DH asked if 8450.5(c)(2)(D) (free lunch program) applies for any age group, or only for youth 16-21?

PRDT said to revise **8450.5(c)(2)(G)** *to "Public assistance records printout**, or".***

Response: The regulations have been revised to address the above comments. To simplify the documentation requirements, the definition of "economically disadvantaged" in subdivision 8450(d) has been revised to be consistent with the State Income Limits for the very low income category. This section has been revised to require the employee to meet the definition of economically disadvantaged. "Economically Disadvantaged Individual" and "economically disadvantaged youth" have been combined. The definitions have been revised to include individuals 14 or older. See also Responses to 8450.5(c), above.

8450.5(c) through (o): *JB* notes that §§8450.5(c) — (o) fail to follow the statutes, stating that "Paragraphs (c) through (o) attempt to provide documentation standards for the employee eligibility criteria provided in the statutes in subclauses (b)(4)(A)(iv)(III) through (VIII). The documentation standards fail to follow the JTPA TAG 'Table of Documents to Establish JTPA Title II Program Eligibility,'" (The letter includes copy as attachment).

Response: Commenter is correct that the regulations do not follow JTPA – which is obsolete and has been superseded by WIA. Although JTPA documentation standards may be relevant for the eligibility category in subclause (b)(4)(A)(iv)(I) of R&TC §23622.7(b)(4)(A)(iv)(I), which covers the JTPA "or its successor" – WIA, subclauses (b)(4)(A)(iv)(III) through (VIII) do not incorporate or require JTPA documentation standards. The documentation standards set forth in these regulations are within the scope of the applicable R&TC statutes.

8450.5(d): *FA* asked for clarification on whether documentation from (d) (1),(2) and (3) is required.

Response: The intent is that the applicant must provide documentation from all three, which is consistent with R&TC Section 23622.7(b)(4)(A)(iv)(IV)(aa). Revised subdivision 8450.5(c) has been amended accordingly.

8450.5(d), (d)(1): Multiple commenters suggested including a Worker Adjustment and Retraining Notification Act (WARN) notice. Also suggested were CalJOBS internet sites, the UI Profiling System, applicant statements, removal of the words "due to layoff" for clarification purposes, inserting "or applicant's representative" after the word applicant, EDD printout showing unemployment benefits, signed employment application regarding layoff, and combining (d)(1)(C) and (d)(1)(E). *MS*, *FA*, *GB*,*JP*,*LK*,*EJ*,*LG*,*LS*,*CM*, *JFF*.

Response: A WARN notice has been added to revised subdivision 8450.5(d), where it is more appropriate. The words "due to layoff" have been deleted. HCD does not believe adding applicant statements, an employment application, employee affidavit or "or applicant's representative" is appropriate. More reliable objective documentation is available, and an applicant may be inclined to embellish the truth in order to obtain employment or a voucher. Revised subdivision (c)(1)(C) and (c)(1)(E) have been combined. See also **Major Issues**.

8450.5(d)(2): *EJ* commented: "*Current law does not require the employee to receive unemployment benefits in order to qualify as a dislocated worker. Employees simply have to be laid off to meet this requirement. Therefore, this subsection should be deleted and replaced with language requiring documentation that the employee was laid off. A signed statement from the employee regarding the lay off could be used to document dislocated worker status.*"

Response: The regulations do not require an employee to receive unemployment benefits. It is an acceptable alternative qualification. Revised subdivision 8450.5(c)(1)(A) allows a notice of termination or layoff. HCD believes an employee statement is not an appropriate form of documentation since a fired employee might be motivated to say he was laid off in order to obtain a job; and better, objective documentation is available.

8450.5(d)(2): Commenters wanted to add the words "applicant's agent or the employee" after "applicant," and requested the following document be added to the list: "(E) The employee has been identified as a Dislocated Worker through the UI Profiling System." *LG, LS, JFF.*

Response: HCD believes that requested additional language is not appropriate. (See response to 8450.5(d)(1), above, and **Major Issues**.) The UI Profiling system relates to the demonstration by an employee who is receiving unemployment benefits that he or she is seeking employment. Documentation of eligibility for unemployment insurance, such as a Form 501, seems a more direct and tangible measure of this form of eligibility, and thus the UI Profiling system has not been added.

8450.5(d)(3): *JP* suggested that (d)(3) be amended by adding "*(D) Internet site, such as CalJOBS that indicates lack of industry/occupation availability; (E) The employee has been identified as a Dislocated Worker through the UI Profiling System; (F) Applicant Statement."*

Response: Revised subdivision 8450.5(c)(3)(A) (Screen print of EDD Labor Market Information screen indicating lack of industry/occupation jobs) appears to address the suggestion for (D); on the UI profiling system, see immediately preceding Response. HCD believes an employee statement is not an appropriate form of documentation for the reasons expressed above in Responses to 8450.5(d)(2).

8450.5(d)(3): *EJ* commented: "*Determining if an employee is unlikely to return to his or her previous industry of employment is subjective and therefore difficult to document. Getting statements from doctors and state agencies to that effect will only add time and effort to the vouchering process.*"

Response: These statements are statutory options, among others, but not requirements.

8450.5(d)(3): *CM* commented: "*The word "employment" in 8450.5(d)(3) should be changed to "occupation" which is the term used in the statute. In addition to the documents listed in 8450.5(d)(3)(A) – (C), all of the documents listed in the EDD JTPA Directive 97-7 should be accepted. In 8450.5(d)(3)(A), "lack of availability" should be changed to "limited availability," which is the phrase used in the statute. A definition for "limited availability" should be included in the proposed regulation. Do applicants have access to the EDD screen prints? Is this labor market information specific to the local area, as required by the statute?"*

Response: The suggested change for "occupation" has been made. R&TC Section 23622.7(b)(4)(A)(iv)(IV)(aa) uses the language "unlikely to return" to the previous occupation. R&TC Section 23622.7(b)(4)(A)(iv)(IV)(cc) uses the language "limited opportunities" in the same or similar occupation. Revised regulation subdivision 8450.5(e) addresses R&TC Section 23622.7(b)(4)(A)(iv)(IV)(cc). However, HCD believes that the same documentation may be used to meet the "unlikely to return" and "limited opportunities" requirements, and the regulations have been revised accordingly. HCD believes it is more appropriate not to include definitions and leave this to whatever language and definitions EDD uses for its Labor Market Information screens. Since JTPA has been superseded by WIA, HCD believes it is inappropriate to add documents from JTPA. (See also WIA discussion in FSOR regarding 8405.5(b).) It is HCD's understanding that the EDD screens are available on the Internet, and include local variations.

8450.5(d)(3)(A): *DH* asked where this information is located on the EDD/LMI website.

Response: The information is available at www.edd.ca.gov. Go to Labor Market Information, where Local Area Profile and Occupation Profile are available.

8450.5(e): Several commenters recommended a WARN notice, applicant statement, notice of intent to layoff or other company documentation of employee's termination, notice of foreclosure, or bankruptcy documents as options in one or both (e)(1) and (e)(2).s. (*LK, FA, GB, JP, LG, LS, JFF*)

Response; The WARN notice has been added to both (e)(1) and (e)(2). An applicant statement has not been added as HCD believes an adequate variety of better and more reliable documentation is available. Notice of intent to layoff and notice of foreclosure have not been added because these are premature, and adequate better documentation exists. Bankruptcy information is already cited in subdivision 8450.5(e)(1)(A) and has not been added to (e)(2) as inappropriate.

8450.5(e)(1): *LG* suggested (e)(1)(B) should be combined with a document to prove that the individual was an employee of the company identified in the printed media article as having laid-off individuals.

Response: Subdivision (2) of this regulation requires documentation that the employee was employed at the company identified in subdivision (1).

8450.5(e)(1): *GB, LS,* and *JFF* commented that It should state after "applicant", "applicant's agent or the employee."

Response: HCD believes it inappropriate to add "applicant's agent or employee" to either (e)(1) or (e)(2) (see Response to 8450.5(d)(1), above, and **Major Issues**).

8450.5(e)(2): *EJ* said an EDD print out showing that the employee received unemployment benefits prior to employment with applicant should be added to the list of eligible documents.

Response: This change is not appropriate because this subdivision deals with plant closure or substantial layoff. Also, Unemployment Insurance Form 501 is an option, as listed in subdivision (2)(C).

8450.5(e)(2): *GB*, and *LG* said (e)(2)(C) should be combined with a document to prove that the individual was an employee of the company identified in the printed media article as having laid-off individuals

Response: The regulation has been revised accordingly.

8450.5(f): *GB* said insert "or applicant's representative" after the word applicant, and delete "and issued no sooner than 26 weeks prior to the date of hire."

Response: HCD believes it inappropriate to add "or applicant's representative (see response to 8450.5(d)(1)). See **Major Issues**. The 26-week clause has been deleted. A definition has been added for "long-term unemployed" to mean 15 or more consecutive weeks, consistent with the EDD Labor Market Information as provided on its website.

8450.5(f): *DH* asked, what happened to the qualifier "unlikely to return to that occupation"?

Response: "Unlikely to return" is language used in R&TC Section 23622.7(b)(4)(A)(iv)(IV)(aa), which is covered in subdivision 8450.5(c). Also, a new

subdivision (2) has been added to address the statutory requirement that the employee has limited opportunities in his or her previous occupation..

8450.5(f): *JSB* said this definition includes language that the individual must have 'limited opportunities for employment or reemployment in the same or a similar occupation in the area in which the individual resides, including an individual 55 years of age or older who may have substantial barriers to employment by reason of age'. Need to document that, in addition to 'unemployed 15 of the 26 weeks prior to hire'.

Response: The eligibility of an individual 55 or older, with or without age discrimination, exists in the present language without needing to be specified. Thus, this section already includes a person 55 years of age or older who is dislocated due to long-term unemployment.

8450.5(f): *PRDT* commented that the phrase "no sooner than 26 weeks prior to the date of hire" leaves out long term displacement.

Response: The 26 weeks phrase has been removed. A definition of long-term unemployed has been added (see Response to *GB* comment to 8450.5(f), above).

8450.5(f): Several commenters noted the regulation makes little or no provision for any individual who does not have unemployment benefits, nor does it define the key term of "long-term unemployed"; one felt that "long term unemployed" should be added to the definitions (suggesting at least 26 weeks). Commenters suggested 8450.5(f) should provide a subdivision (6) allowing an employee affidavit including employment history; others wanted to allow under the dislocated worker category someone who is eligible for unemployment benefits but is not necessarily receiving nor has applied to receive them; one suggested a definition of long-term unemployed as unemployed 15 of the previous 26 weeks, requested a definition of "Workers investment Act Displaced Worker Unit Verification," and requested at least one document unrelated to unemployment insurance be included in this list. *CM, IKR, JP.*

Response: To accommodate unemployment without unemployment benefits, and allow documentation not related to unemployment benefits, HCD will add subdivision (1)(F) to allow documentation satisfying subdivisions 8450.5(c) or (d) that are dated more than 15 weeks before the date of employment. Long-term unemployment has been defined as 15 or more consecutive weeks as shown on the EDD Labor Market Information website. An employee affidavit has not been added because HCD believes an adequate variety of better, and easily obtainable, documentation is available. HCD's understanding is that local WIA representatives can provide the verification of Workers Investment Act information.

8450.5(f) – (o): Commenters requested adding after "applicant", "applicant's agent or the employee," and requested the words "and issued no sooner than 26 weeks prior to the "date of hire" be removed because it is addressed more appropriately in (f)(1). *JFF, LG, LK, LS.*

Response: HCD will remove the 26 weeks clause. HCD believes it inappropriate to add "applicant's agent" language (see response to §8450.5(d)(1)). As discussed above in the Responses to 8450.5(c), (d) and (e), applicant statements are less reliable since they are not verifiable and an employee or applicant has an incentive to embellish the truth to obtain a job or voucher.

8450.5(f)(1): *PRDT* wants to add "or proof that unemployment benefits were exhausted."

Response: This language has been added to the regulation.

8450.5(g): *FA* and *FTB* commented that the documentation listed does not prove the criterion; a business license or articles of incorporation, by themselves, will not prove the business closed, nor that the individual is unemployed due to economic conditions or natural disaster; suggested breaking the section down into (1) which deals with verification of ownership and (2) which deals with why business shut down – financial information.

Several commenters noted that a certified copy of the articles of incorporation may not be available after dissolution and is not required; additionally only the prior year tax statements may be available; one also asked if one year's return would satisfy (4); and suggested (g) be changed to: "(3) Copy of articles of incorporation for the business listing the employee as an owner, officer or principal. (4) Prior year's income or sales tax return." *CM, GB, JP, LS.*

Response: The regulation has been amended to clarify the acceptable documentation.

8450.5(i): *JSB* notes that the tax code also states that the individual 'was an active member of the armed forces or National Guard as of September 30, 1990'. "Need to document that, in addition to demonstrating that the employee's separation from the service either was involuntary or was done pursuant to a special benefits program."

Response: Subdivision 8450.5(h) has been revised to be consistent with the applicable R&TC language.

8450.5(i): *IKR* and *LM* propose adding federal government form DD124 (sic) as eligible documentation for demonstrating military service.

Response: Form DD 214 is the Dept of Defense Report of Separation. HCD agrees that a report of separation, which would include the DD-214, would be acceptable documentation, and the regulations have been revised accordingly.

8450.5(i): *LM* suggested inserting "honorable discharge" in the last sentence after the word "involuntary."

Response: Because "honorable" is not used in the statute (R&TC § 17053.74(b)(4)(A)(iv)(IV)(ff)), this has not been added.

8450.5(j): *EJ* felt an EDD print out showing that the employee received unemployment benefits prior to employment with applicant should be added to the list of eligible documents.

Response: This change has not been made as HCD believes such documentation would only show unemployment, not seasonal or migrant worker status.

8450.5(l): *JB* felt the proposed regulations fail to include any documentation standards for the two latter eligibility criteria [in R&T statutes, (b)(4)(A)(iv)(V)]; *JB* and *JP* both noted that the regulations fail to provide any documentation standards for substantiating that an employee is eligible as a veteran of the Vietnam era, or is a veteran who is recently separated from military service; *LK* noted that the underlying statute qualifies any veteran, not just a disabled one.

Response: A new subdivision 8450.5(l) has been added to address documentation for Vietnam veterans and veterans recently separated from military service. The Department disagrees that the statute qualifies *any* veteran, and the regulations therefore address only those categories of veterans specified in the statute. A legislative change is required to expand the veteran categories beyond those listed.

8450.5(l)(1): *MS* said:

> *"The ISOR on page 14 explains that an employment application will be considered acceptable documentation because, "this is similar to a 'declaration against self interest' and wouldn't be made by a prospective employee unless true." I think the same logic would apply for the case of a disabled individual. Many employers are reticent to hire disabled individuals for a wide variety of reasons, therefore stating as such on a job application could also be considered a "declaration against self interest."*

Response: Disability is a statutory category and should be an available option. The suggestion, however, amounts to accepting an employee statement as qualification. We believe an adequate variety of better documentation options, such as those listed, is available.

8450.5(l)(1): *JSB* said It was his understanding that 'eligible for a state rehabilitation plan' means eligible for a California Vocational Rehabilitation plan. If so, (according to the local Department of Rehab) they require more than being disabled. When they review the documentation, they need information about the impact the disability has on the individual's ability to work. Is it a barrier to employment? Is the individual able to work? Between the medical records and interviewing the individual, they determine whether they would be eligible for a state plan.

Response: The R&TC statute does not limit eligibility only to a California Vocational Rehabilitation plan. The statute states only that the employee must complete a "state rehabilitation plan." Further, the statutory requirement is not the same as the Department of Rehabilitation's. Thus, no change has been made to the regulations.

8450.5(l)(1)(E): *DH* asked if this language means an agency assigned by a court, ok'd by the State, authorized by local government, or any 12-step program? If the latter is the case why not allow anyone convicted of a misdemeanor DUI/possession/sale of a controlled substance?

Response: To be consistent with the R&TC Section 23622.7(b)(4)(A)(iv)(V), the regulation has been changed to clarify that it must a "state drug or alcohol rehabilitation agency." Other documentation is also available.

As discussed in the Response to 8450.5(m), below, the definition of ex-offender has been revised to include persons convicted of a misdemeanor offense that was punishable by incarceration, or charged with such an offense but placed on probation without a finding of guilt. A misdemeanor possession conviction would therefore qualify if it could have led to jail time. To qualify under the ADA, however, does not require a violation of narcotics laws, nor jail time. See also **Major Issues**.

8450.5(m): Multiple commenters objected to the limitation of "ex-offender" to those convicted of felonies, and recommended inclusion of various degrees of misdemeanor offenses, and/or of involvement in the criminal justice process, as well. It was pointed out that statutory mention of "ex-offender" is not limited to felonies. *JM, GB, DH, PRDT, LK, LG, IKR*.

Commenter *JB* said the proposed definition of "ex-offender" ignores the fact that the JTPA is the source of the term "ex-offender" in the Statutes. As a result, the 8450(m) definition is much more restrictive than in the Statutes, which has been relied upon by everyone for the past 11 years, and is not supported by the legislative history.

PRDT added that (m)(1) should be revised to say "Court documents or a printout from an independent court records service."

JM also proposed that all references to employment applications throughout the regulations should include acceptance of electronic applications with electronic signatures.

Response: The definition of ex-offender has been broadened (see **Major Issues**). Misdemeanor offenses punishable by incarceration has been added. The department will employ electronic signatures other improved technologies when they are determined to be appropriate and secure, and when adequate resources are available.

In response to *JB*, the JTPA has been superseded. The statutes contain no definition of ex-offender. R&TC §17053.74(b)(4)(A)(iv)(VI) says ex-offender includes probation without a finding of guilt, which is consistent with our revised definition.

Regarding *PRDT*'s comment on (m)(1), HCD is uncertain of the reliability of documents from an "independent court records service," and does not see the necessity of an alternative to copies of court records.

8450.5(m): *EJ* and *CM* said employer background checks should be usable to validate ex-offender status.

Response: Employer background checks lack known standards for accuracy and completeness, and appear to be a secondary source for the documents already listed. HCD prefers the primary documents, so employer background checks have not been added

8450.5(m)(5), (n)(9) and (p)(7): *LG* says applications for employment are not valid documentation. Regarding (m)(5), *JA* said:

> *"HCD should require the entity issuing the voucher to follow up with the relevant law enforcement agency within six months to check the accuracy of the self-certification. Alternatively, HCD could omit the self certification option and retain the other four documentation options. Despite HCD's assertion that the declaration on the employment application is similar to a "declaration against self interest," it leaves open the opportunity for fraud. The proposed regulations do not address whether an "ex-offender" with an expunged record and documentation of the expunged record is still considered an "ex-offender." An ex-offender without a record would qualify under the definition being proposed. However, if the individual has an expunged record, s/he does not have the same barriers to employment that an individual with a record faces.*"

Response: Subdivisions (m)(5), (n)(9) and (p)(7) have been deleted. Other sufficient documentation is available. The definition of ex-offender has been amended to exclude an individual whose record has been expunged, since an expungement effectively removes any barrier to employment the individual might face as a result of the offense.

8450.5(n) and (n)(9): *JP* said the regulation should allow an individual "eligible for" but not receiving public benefits to qualify. The underlying statute is 23622.7(b)(4)(A)(iv)(VII) which says " . . . was a person *eligible for* or a recipient of . . ."

DH and *FA* maintained, regarding (n)(9), that you cannot verify through lack of work history that someone was receiving public assistance. If 60 days is the limit for receipt of public assistance prior to hire, the regulations should address this in the initial criteria in § 8450.5(n). If not, take the 60 days out. On this point, *PRDT* suggested deleting 60 days and inserting 6 months.

LK said "eligibility" for public assistance should be retained as the standard since it reflects the underlying statute; there is no basis to require "receipt" of public assistance as the sole standard.

Response: Consistent with the statute, the regulation has been revised to include eligibility for one of the listed programs. Subdivision (n)(9) has been deleted. (See Response to 8450.5(m)(5), (n)(9) and (p)(7), above.)

8450.5(o): *JP* and *LK* said the IRS provides a credit for Native Americans under the provisions of IRC Sec 45A: Federal regulations allow (1) Native American tribal record

document, including a tribal membership card or a letter from the tribe or tribal enrollment office.(2) Certified Degree of Indian Blood (CDIB) card, issued by the Bureau of Indian Affairs. These should be allowed as proof for Indian employment credit (Sec 45A).

Response: These items are already listed in (o)(1) and (2).

8450.5(o): *CM* noted that subdivision 8450.5(o) does not address Native Samoan or Native Hawaiian, both of which are included in "other groups of Native American descent," and suggested the regulation be revised accordingly.

Response: The regulations have been revised to include other groups of Native American descent, consistent with the statute.

8450.5(p): *MS* stated " . . . one of the following documents dated within 90 days prior to the time of hire . . ." from the subdivision and noted that the ISOR on page 15 explains that this requirement is due to a concern over taxpayer fraud. The commenter felt that regulations should not restrict the activities of law-abiding taxpayers because of the potential for illegal activity. Taxpayers who submit fraudulent documentation for any qualification should be criminally prosecuted. The regulations should not exclude documents that according to a common sense approach clearly illustrate qualification (for example, a W4, listed specifically in this subdivision, would always be completed *after* the hiring of an individual). A statement could be allowed stating that the employer agrees not to submit fraudulent documentation.

JM, LK, EJ added that the quoted phrase should read something like "…within 90 days prior to the time of hire or 7 days after hire," because it is illegal to have an I-9 completed prior to hiring an individual. *GB, LG, and LS* felt the phrase should be "at (or prior to) the time of hire." *LK* added that additional information regarding residency address should be allowed, such as bank statement, credit card statement, or loan statement.

CM pointed out that I-9s, W-4s, Drivers Licenses and job applications will not necessarily be dated "90 days prior to the time of hire," so the phrase should be eliminated. *JFF* agreed, and asserted that (p)(7), the application for employment, was not valid documentation.

LK, LG and *JFF* felt an applicant statement or other acceptable documentation should be added for the "displaced homemaker" category or for veterans.

JB also objected that the I-9 is often not filled out until after the initial hire date, and noted a possible conflict where (p) says all documents must be dated within 90 days of the date of hire, but (p)(7) says the application must be dated no more than 60 days prior to the hire date. Would an application dated between 60 and 90 days be acceptable?

JP asserted that most hiring systems today rely on electronic applications only and therefore electronic applications and electronic signature must be accommodated or the regulations are technologically anachronistic before promulgation. *JM* agreed.

FA and *CTT* pointed out that the statutory requirement is: "immediately preceding the qualified employee's commencement of employment with the taxpayer was a resident of a targeted employment area…." *FA* also asked if the regulations are defining "immediately preceding" as 90 days? If so, does this pertain to all references to "immediately preceding", or is this specific to TEA?

DH and *JP* felt the I-9 is more reliable than the other documentation listed, in part because it is filled out at or after the time of hire. What happens if an employee moves between the time the job application is filled out and when they are hired? A voucher based on this information can be wrong. Why not stick with the I-9? All employers are required to fill them out and they are dated at the time of hire and should have the accurate address of the employee.

Response: The phrase " . . . within 90 days prior to the time of hire" in revised subdivision 8450.5(p) has been changed to "immediately preceding the commencement of employment" to match statutory language, and has been moved to follow "TEA", where it will refer to the employee's residence in the TEA rather than to the date on the documents. "Immediately preceding" has been defined to mean within 90 days, wherever used in the regulations. Subdivisions (p)(7) (application for employment) and (p)(3) (copy of W-4) have been deleted because easily-obtained, more reliable documentation is available.

The department will employ electronic signatures other improved technologies when they are determined to be appropriate and secure, and when adequate resources are available.

Documentation of veteran's status is listed in subdivisions 8450.5(h), (k) and (l). The Displaced Homemaker category has been deleted.

We understand the logic of using only the I-9, but feel that other regulatory options are needed as well. The hypothetical case cited by *DH* and *JP*11 seems likely to be rare. The job application option has been deleted.

8450.5(p): *CTT* and *NB* said the basis for establishing TEA's, per the California Government Code, is census tract information, which contains the average income levels for residents in specific geographic locations. They have occasionally encountered errors in the TEA street ranges issued by Enterprise Zone coordinators, which are not complete and have not been updated to take into account changes, including new streets, expansions, and errors that are known but not corrected. Allowing census tracts as an additional method of verifying TEA eligibility would allow a check of the street ranges to ensure compliance with the TEA census tracts issued by the state, and could result in more accurate vouching of TEA qualifiers. To the extent census block data will result in a more accurate measure of residents' financial

circumstances, we also agree with using census block data as an additional method of verifying TEA eligibility.

Response: HCD agrees. However, the current statutory language does not provide for updating this information (see Government Code §7072(h)). Current proposed legislation, if enacted, would provide for updating this information.

8450.5(p): *NB* stated:

> "*It is our understanding that, as a general business practice, most employers have their employees complete the Form I-9 either before or on the first day of employment. We typically find situations where the employee is hired but does not start employment until the following week or later. In this situation, it is possible that an I-9 may not be completed by either party until the 1st day of work. We suggest amending the wording of the proposed regulations to read dated within '90 days prior to the first day of employment' rather than '90 days prior to the time of hire.*'"

Response: The regulation has been amended to say "… 90 days prior to the commencement of employment…"

Section 8450.6. Alternate Method of Establishing Eligibility for Issuance of a Voucher

This proposed new section listed alternative decision authority or documentation that would be allowed if adequate information as specified in 8450.5 were unavailable. The applicant would be allowed to produce "alternate documentation" if the zone manager considered it adequate, including statements signed by the employee.

Commenters variously suggested adding more forms of alternative documentation, or increasing the zone manager's discretion to accept what might be available. Some commenters opposed the whole section as impracticable, or likely to lead to discrimination against applicants or qualified employees who could document their status, or likely to bring outside pressure to bear on zone managers to accept minimal documentation, or likely to invite other abuses of vouchering. It was pointed out that the consistency and quality of voucher evaluations would deteriorate.

Some thought the proposed alternatives would likely become the real-world minimum for documentation rather than a last-resort alternative. Some suggested that HCD would have to get involved in judging alternative documents. Some suggested tighter specification of alternative documents.

HCD has decided to delete this section from the regulations, for the following reasons:

1. 8450.5 has been revised to expand the variety of acceptable documentation.
2. 8450.6 would grant eligibility based on little more than an employee's or applicant's signature attesting compliance. HCD's experience in administering the program leads us to believe that this would only increase the variable quality

of vouchers, which these regulations are intended to reduce. We tend to agree that what was intended to be a last-resort alternative would inevitably become the preferred and principal mode of documentation.

3. Alternative approaches to this section have been considered, but they effectively result in accepting essentially nothing more than a signature, or the unsupported conclusion of a zone manager or staff.

Section 8450.7. Voucher Appeals

Most commenters on this issue objected to subdivision 8450.7 of the proposed regulations, which provided that "If the Department fails to issue a written response within 90 calendar days, the appeal [to HCD of the local denial of a voucher] shall be deemed denied." Commenters further objected to HCD not being required to issue a written decision on an appeal.

These provisions were added because the burden of proof is on the taxpayer to demonstrate the validity of an appeal of a local voucher denial. A denial is deemed effective unless HCD overturns it. The intent was therefore to expect and provide a written decision only where the local decision was overturned.

However, HCD accepts the prevalent expectation of written responses to appeals, and the regulations will require HCD to respond in writing to all appeals within 90 days of receipt. It has also been suggested that an appeal be deemed sustained and the voucher approved if HCD does not respond as required. This suggestion has not been implemented because HCD is reluctant to permit approval of vouchers for reasons other than merit.

8450.7: *CM* felt the proposed regulations should require EZ managers to respond to voucher requests within 30 days of receipt of a completed application, or the request should be deemed approved. *CM* also wanted a written denial, since it presents a problem for taxpayers when a coordinator simply refuses to issue a written denial of a voucher request.

JSB, LG, LS and *JFF* felt the time for a zone manager's response should be at least 60 days because a zone cannot control the number of applications and/or appeals coming in, and may need time to review to additional internal controls or appeals processes that are developed by a zone. *IKR* suggested 90 days. *LG, LS* and *JFF* also repeated their opposition to "vouchering agents," remote zones," the "remote zone manager" and cross-jurisdictional vouchering.

CM also asked why 8450.7 is necessary. It is unclear why taxpayers should be denied the protest and appeal rights otherwise provided in the R&T Code.

Response: Requirements have been added that a voucher shall be issued or denied within 60 days of receipt of the application, and that a denial must be made in writing, including reasons for the denial. Failure to meet the time limit will be subject to an audit

finding of nonperformance, rather than cause approval of the voucher by default. The regulations should not permit a voucher to be issued on any grounds other than merit.

The appeal process in 8450.7 does not replace, or deny a taxpayer,any protest or appeal rights that may be allowed by the R&TC. Rather, the appeal process in 8450.7 pertains specifically to the issuance of a voucher. The legislature mandated that HCD develop regulations for the issuance of vouchers by local governments. Absent any contrary legislative instruction, HCD believes the appeal process for the issuance of a voucher is an appropriate – if not necessary – part of these regulations.

8450.7(a): *LG* would add to the list "applicable fee(s)." A zone should be able to charge a fee for considering an appeal, as this process would require significant staff time. Additionally a fee may deter frivolous requests for appeals. HCD may choose to consider charging a fee for this service as well, given limited resources.

Response: HCD believes the decision to charge fees for the local administration of an Enterprise zone should be a local decision. At this time, HCD is not planning to charge a fee for appeals. Thus, the regulation has not been changed.

8450.7(b) – (d): *JFF* felt the Department should have the ability to issue a voucher on appeal based on the Department's "opinion" that alternate documentation establishes that an employee was "qualified." If the Department finds there is additional documentation that should be accepted, it should notify all zones. The Department should also be required to issue written responses to appeals. *GB* wanted to strike the word at the end of the paragraph, "denied," and insert "approved". *PRDT* and *JP* felt it is wrong that a lack of response from the state could create a non-appealable denial of process. It is never a good policy to allow a government agency to ignore their constituency and receive a benefit. *PRDT* also suggested that an additional 30-day period be observed before the appeal be deemed granted. *JP* suggested that part (c) be restated as:

> *"(c) A final decision by a local zone manager denying an application may be appealed to the Department within 30 calendar days of the date of the final decision by the local zone manager. The Department shall have 90 calendar days from receipt of an appeal from a local zone manager to issue a written response granting or denying the appeal. If the Department fails to issue a written response within 90 calendar days, the appeal shall be deemed approved."*

Others agreed that HCD should be required to respond to appeals in writing, and most of them also agreed that appeals should be deemed approved if HCD fails to issue a written finding within the allowable time period. *CM* felt 90 days is too long, and preferred 30 days. *CM* also objected that the proposed regulations do not provide any basis by which the Department is to conduct the appeal, impose any requirement upon the Department to provide a written explanation for the denial of an appeal, or address the consequences if the Department fails to respond to an appeal. *LK, LG, LS, CTT, NB, IKR, DS, LM, JFF, JA.*

Response: State law does not authorize HCD to issue vouchers, even in the event a zone manager refuses to do so. However, the regulations have been revised to allow an applicant to appeal to HCD, after first appealing to the zone manager, and if HCD grants the appeal then the regulations require the zone manager to issue the voucher. Also, the regulations have been amended to require HCD, as well as the zone manager, to issue its appeal determinations in writing. The regulation has been amended so that there is no "deemed denial" or "deemed acceptance" of an appeal, as HCD is reluctant to permit approval of a voucher on any grounds other than merit.

Also, the word "local" has been deleted from three places in (c), along with the last sentence. HCD feels it necessary to allow 90 days to accommodate potential resource limitations while observing the mandate to respond in writing. Other time periods have been revised to accommodate commenters' requests.

Miscellaneous

1. Workforce Investment Act (WIA)

Comment by *JA*: The ISOR states (page 7) that the Legislature "did intend to confer a tax credit on a zone business for every employee hired." This is contrary to the rationale behind limiting the applicable scope of WIA. The ISOR should read: "The Legislature did *not* intend to confer a tax credit on a zone business for every employee hired." This typographical error should be addressed in order to prevent the improper usage of the ISOR in court.

Response: HCD agrees. The typographical error has been corrected.

2. Voucher and Checklist

When will we see a new Checklist and Voucher for EZs? *DH*

Response: Following adoption of the regulations.

3. Economic Development Programs

Will these vouchering regulations also pertain to the other EDA programs that are involved with vouchering employees? With no mention of retroactive vouchering in these regulations, do EDAs continue with present practice? *LS, JFF.*

Response: These regulations govern only enterprise zones, as provided by statute, and do not cover Targeted Tax Areas (TTAs), Manufacturing Enhancement Areas (MEAs), or Local Area Military Base Recovery Areas (LAMBRAs).

4. <u>Other Oral Comments by *MD*</u>:

- There should be another way of identifying employees than SSN because there are some privacy concerns with respect to release of that information.
- The deemed denial process is appropriate and should be kept.
- The definition of an ex-offender ought to include felonies and misdemeanors.
- On alternate documentation, you don't want to have taxpayers denied vouchers where there is valid proof of entitlement simply because they do not fit on the list of documents. An appropriate standard would be to use the State Board of Equalization Evidentiary Standard to allow the zone manager to consider any evidence that responsible persons would rely on in the conduct of serious affairs.

<u>Response:</u> For responses to the first three bulleted items, see **Major Issues**. For the fourth item: HCD considers the State Board of Equalization Evidentiary Standard to be vulnerable to arbitrary and variable standards of judgment. HCD's program experience has led to concerns about inadequately documented vouchers. HCD believes it necessary for the integrity of the program to specify acceptable documentation to the extent possible, rather than give more discretion to voucher issuers, in order to ensure proper investment of and return on state tax expenditures.